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(16,467 & 16,652.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 287.

A. M. THOMAS, J. B. HART, AND H. B. OWEN, AS THE
BOARD OF COUNTY COMMISSIONERS OF KAY COUNTY,
OKLAHOMA TERRITORY, ET AL., APPELLANTS,

v.s.

D. P. GAY AND A. S. REED, PARTNERS AS GAY AND
REED, ET AL.

FILED JANUARY 15, 1897.

No. 439.

D. P. GAY AND A. S. REED, PARTNERS AS GAY AND
REED, ET AL., APPELLANTS,

v.s.

A. M. THOMAS, J. B. HART, AND H. B. OWEN, AS THE
BOARD OF COUNTY COMMISSIONERS OF KAY COUNTY,
OKLAHOMA TERRITORY, ET AL.

FILED AUGUST 20, 1897.

APPEALS FROM THE SUPREME COURT OF THE TERRITORY OF
OKLAHOMA.

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Filed Dec. 14, 1896. Edgar W. Jones, clerk.

1 In the Supreme Court of the Territory of Oklahoma.

D. P. GAY and A. S. REED, as Partners as Gay & Reed ;
A. M. Miller and J. B. Johnson, as Partners as Miller
& Johnson ; M. Halff and S. Halff, as Partners as Halff
Brothers ; R. H. Harris, W. C. Harris, and William
Childers, as Partners as Harris Brothers & Childers ;
E. T. Comer and H. C. Comer, as Partners as Comer
Brothers ; J. H. Carney, G. M. Carpenter, Virgil Herard,
G. T. Hume ; W. F. Smith and W. L. McCauley, as
Partners as Smith & McCauley ; W. F. Smith, W. W.
Irons, A. I. Adams ; A. I. Adams and Neal Shafer, as
Partners as Adams & Shafer ; C. W. Burt, E. M.
Hewins, I. D. Harkleroad ; Douglas Pierce and J. T.
Crump, as Pierce & Crump ; James Stone, W. M. Hol-
loway, Jesse H. Pugh, R. H. Mosely, Drury Warren,
T. J. Moore, J. M. Slater, and R. W. Prosser, Plaintiffs
in Error and Defendants to Cross-petition in Error,

No. 412.

v8.

A. M. THOMAS, J. B. HART, and H. B. OWEN, as the
Board of County Commissioners of Kay County, Okla-
homa Territory ; J. H. Lane, as the County Clerk of
Kay County, Oklahoma Territory ; S. J. Smock, as
County Treasurer of Kay County, Oklahoma Ter-
ritory, and H. C. Masters, as Sheriff of Kay County,
Oklahoma Territory, Defendants in Error and Cross-
petitioners in Error.

UNITED STATES OF AMERICA, { ss :
Territory of Oklahoma, }

Be it remembered that in the supreme court of the Territory of Oklahoma, at the city of Guthrie, in said Territory, at the times hereinafter mentioned, the following papers were filed and proceed-
ings had in the above-entitled cause, to wit: Petition in error and
case-made, thereto attached.

Endorsed: Filed in the supreme court, at Guthrie, Oklahoma
Territory, January 8th, 1896. Edgar W. Jones, clerk.

1a In the Supreme Court of the Territory of Oklahoma.

D. P. GAY and A. S. REED, as Partners as Gay & Reed ; A. M. Miller and J. B. Johnson, as Partners as Miller & Johnson ; M. Halff and S. Halff, as Partners as Halff Brothers ; R. H. Harris, W. C. Harris, and William Childers, as Partners as Harris Brothers & Childers ; E. T. Comer and H. C. Comer, as Partners as Comer Brothers ; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume ; W. F. Smith and W. L. McCauley, as Partners as Smith & McCauley ; W. F. Smith, W. W. Irons, A. I. Adams ; A. I. Adams and Neal Shafer, as Partners as Adams & Shafer ; C. W. Burt, E. M. Hewins, I. D. Harkleroad ; Douglas Pierce and J. T. Crump, as Partners as Pierce & Crump ; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosely, Drury Warren, T. J. Moore, J. H. Slater, and R. W. Prosser, Plaintiffs in Error,

vs.

A. M. THOMAS, J. B. HART, and H. B. OWENS, as the Board of County Commissioners of Kay County, Oklahoma Territory ; J. H. Lane, as the County Clerk of Kay County, Oklahoma Territory ; S. J. Smock, as County Treasurer of Kay County, Oklahoma Territory, and H. C. Masters, as Sheriff of Kay County, Oklahoma Territory, Defendants in Error.

412. Petition
in Error.

Come now the plaintiffs in error above named, and for their cause of action in error in this court allege and aver that heretofore, in a cause pending in the district court of the county of Kay and Territory of Oklahoma, wherein the Hon. A. G. C. Bierer was presiding judge, by the consideration of said court in a certain action wherein these plaintiffs in error were plaintiffs and the defendants in error were defendants and on the 8th day of January, A. D. 1896, a certain judgment and decree was rendered and entered against these plaintiffs in error judging and decreeing that certain taxes assessed against the property of these plaintiffs in error located in the Kaw Indian reservation and in that part of the Osage Indian reservation attached to the county of Kay and Territory of Oklahoma for judicial purposes were valid and subsisting tax levies against the property of said plaintiffs, and the said court denied the relief demanded in said action to restrain the levy and collection of the said taxes herein referred to, to wit :

A county levy made by the board of county commissioners of the county of Kay and Territory of Oklahoma for the year 1895 of two and one-half mills on the dollar of valuation for court expenses and the territorial levies made for the year 1895 by the territorial board of equalization as follows, to wit :

General revenue, three mills on the dollar;
University fund, one-half mill on the dollar;
Normal school fund, one-half mill on the dollar;
Bond interest fund, one-half mill on the dollar;
Board of education fund, one-tenth mill on the dollar,
making a total of the levies so attempted to be made on the property of these plaintiffs located in said Territory attached to the county of Kay for judicial purposes of seven and one-tenth mills on the dollar of valuation, and the said court vacated and dissolved the temporary injunctions theretofore granted in favor of the said plaintiffs against the levy and collection of said taxes therein referred to and modified the said temporary injunctions and vacated the same, so far as the same affected the specific levies referred to; which said case was tried upon a demurrer to the petition of the said plaintiffs in error in the said district court of the county of Kay and Territory of Oklahoma and upon the facts stated in said petition and the relief claimed in said petition granted in part and denied in part, of which denial in part these plaintiffs in error complain, and which action of the court fully appears by a case-made, attached hereto, marked "Exhibit A;" which said case-made was duly made, served, signed, settled, attested, and filed and is hereby referred to and made a part of this petition in error.

The plaintiffs allege that there is manifest error in the proceedings of the court to the substantial prejudice of these plaintiffs in error in the following particulars, to wit:

First. The court erred in holding that the said levy of two and one-half mills for court expenses was a valid and legal levy on the property of these plaintiffs.

Second. The court erred in holding that the territorial levy of three mills for general revenue was a valid and legal levy upon the property of the said plaintiffs.

Third. The court erred in holding that the territorial levy of one-half mill on the dollar for university fund was a valid and legal levy upon the property of the said plaintiffs.

Fourth. The court erred in holding that the territorial levy of one-half mill on the dollar for normal school fund was a valid and legal levy upon the property of the said plaintiffs.

Fifth. The court erred in holding that the territorial levy of one-half mill on the dollar for bond interest fund was a valid and legal levy upon the property of the said plaintiffs.

Sixth. The court erred in holding that the territorial levy of one-tenth mill on the dollar for board of education fund was a valid and legal levy upon the property of these plaintiffs.

Seventh. The court erred in holding that the said article six of chapter forty-three of the Session Laws of Oklahoma for the Year 1895 was a valid and constitutional enactment, either in whole or in part, under the organic act of this Territory.

Eighth. The court erred in modifying and in vacating the temporary injunctions theretofore granted in the court below against

the levy and collection of a portion of the taxes so held by the court to be valid and legal tax levies on the property of said plaintiffs.

Ninth. The court erred in refusing to grant a perpetual injunction against the said levies hereinbefore referred to as upheld by the court as legal and valid tax levies on the property of the said plaintiffs.

Wherefore the said plaintiffs in error pray that this court may review the action of the court below, and that said cause be remanded with instructions to the court below to set aside the said part of the said judgment and decree denying the relief prayed for by the said plaintiffs in error in part as aforesaid, and direct the said court below to cancel and set aside the levies so erroneously upheld by the said court below, and for such other and further relief as to the court may seem equitable and just.

ASP, SHARTEL & COTTINGHAM,
Attorneys for Plaintiffs in Error.

(Filed Jan. 8, 1896.

EDGAR W. JONES,
Clerk Sup. Court.)

We, the undersigned, attorneys for the defendants in error, hereby waive the issuance and service of summons in error and hereby enter the voluntary appearance of the defendants in error to said petition in error.

C. A. GALBRAITH,
Attorney General,
D. L. WEIR,
County Attorney,
Attorneys for Defendants.

(Filed Jan. 8, 1896.

EDGAR W. JONES,
Clerk Sup. Court.)

3 In the District Court of the County of Kay and Territory of Oklahoma.

D. P. GAY and A. S. REED, as Partners as Gay & Reed; A. M. Miller and J. B. Johnson, as Partners as Miller & Johnson; M. Halff and S. Halff, as Partners as Halff Brothers; R. H. Harris and W. C. Harris and William Childers, as Partners as Harris Brothers & Childers; E. T. Comer and H. C. Comer, as Partners as Comer Brothers; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hueme; W. F. Smith and W. E. McCauley, as Partners as Smith & McCauley; W. F. Smith, W. W. Irons, A. I. Adams; A. I. Adams and Neal Shafer, as Partners as Adams & Shafer; C. W. Burt, E. M. Hewins, I. D. Harkleroad; Douglas Pierce, J. T. Crump, as Partners as Pierce & Crump; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosely, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser, Plaintiffs,

vs.

A. M. THOMAS, J. B. HART, and H. B. OWEN, as the Board of County Commissioners of Kay County, Oklahoma Territory; J. L. Lane, as County Clerk of Kay County, Oklahoma Territory; S. J. Smock, as County Treasurer of Kay County, Oklahoma Territory, and H. C. Masters, as Sheriff of Kay County, Oklahoma Territory, Defendants.

Exhibit "A."

Case-made.

Be it remembered that by orders duly entered in certain causes pending in the district court of the county of Kay and Territory of Oklahoma, in which petitions had been filed by the plaintiffs against the defendants to restrain the levy and collection of taxes on certain property of the said plaintiffs located and kept in the Kaw Indian reservation and in that part of the Osage Indian reservation attached to the county of Kay and Territory of Oklahoma for judicial purposes, the said causes, by an order and judgment duly entered in each, were consolidated into one cause, entitled as set out in the title to this caption, in which said causes all of the parties plaintiff appear as parties plaintiff in the title to the consolidated action as set out in the above title, and which said causes so consolidated in the action above entitled are as follows:

D. P. Gay & A. S. Reed, as partners as Gay & Reed, and others *vs.* S. J. Smock, as county treasurer of Kay county, and others, cause # 416;

J. H. Carney and others *vs.* A. M. Thomas and others, cause # 458;

E. M. Hewins *vs.* A. M. Thomas and others, cause # 467;

I. D. Harkleroad *vs.* A. M. Thomas and others, cause # 471;

Douglas Pierce and others *vs.* A. M. Thomas and others, cause # 468;

Jesse H. Pugh *vs.* S. J. Smock and others, cause # 436;

R. H. Mosely *vs.* A. M. Thomas and others, cause # 469;

Drury Warren *vs.* A. M. Thomas and others, cause # 470, and

T. J. Moore and others *vs.* S. J. Smock and others, cause # 448.

That in each of said causes before enumerated and on the 8th day of January, A. D. 1896, there was entered a certain order of consolidation; which said order, omitting the title of each case, was and is identical and is in words and figures following, to wit:

"Now, on this 8th day of January, A. D. 1896, said cause comes on to be heard upon the motion of the plaintiffs to consolidate this cause with certain other causes pending in this court of the same character, to wit, suits brought by owners of property located in the

Kaw Indian reservation and in that part of the Osage Indian 4 reservation attached to the county of Kay and Territory of

Oklahoma for judicial purposes, to restrain the levy and collection of taxes for the year 1895 upon such property for territorial and county purposes.

And the plaintiffs in each of said causes appearing by Messrs. Asp, Shartel & Cottingham, their attorneys, and the defendants in each of said causes appearing by Hon. C. A. Galbraith, attorney general, and Hon. David L. Weir, county attorney of Kay county, and the parties consenting in open court to such order of consolidation, and it appearing to the court upon examination of the pleadings in each of the same that they might have properly been brought in a single suit instead of several actions in the first instance, and that such order of consolidation will promote the ends of justice and prevent a multiplicity of suits, it is by the court ordered that the said motion to consolidate said causes be, and the same is hereby, sustained; and it is ordered by the court that each of said causes, to wit:

D. P. Gay and A. S. Reed, as partners as Gay & Reed, and others *vs.* S. J. Smock, as county treasurer of Kay county, and others, cause # 416;

J. H. Carney and others *vs.* A. M. Thomas and others, cause # 458;

E. M. Hewins *vs.* A. M. Thomas and others, cause # 467;

I. D. Harkleroad *vs.* A. M. Thomas and others, cause # 471;

Douglas Pierce and others *vs.* A. M. Thomas and others, cause # 468;

Jesse H. Pugh *vs.* S. J. Smock and others, cause # 436;

R. H. Mosely *vs.* A. M. Thomas and others, cause # 469;

Drury Warren *vs.* A. M. Thomas and others, cause # 470; and

T. J. Moore and others *vs.* S. J. Smock and others, cause # 448,

be, and the same are hereby, consolidated in one suit, to be entitled and docketed as a separate action from each and all of the actions so consolidated, and to be given a separate docket number on the docket of this court, to wit, number 516, and in the title of said cause the names of all of the plaintiffs in each of such actions shall

appear as plaintiffs, and the names of all of the defendants in each of said actions shall appear as defendants.

And it is further considered and ordered by the court that the temporary injunctions heretofore obtained in said several causes shall be continued in force upon the separate verified petitions heretofore filed in each of said causes as and for the several affidavits for temporary injunctions filed in said causes and upon the bonds and undertakings given in each of said causes and without prejudice to the rights of the defendants to their actions for breach of the conditions of such bonds, and that said temporary injunctions shall continue to operate in the said consolidated cause with like effect as though originally procured and awarded therein, and the said plaintiffs are hereby directed and required to file instanter in said consolidated cause their petition setting up the facts upon which they rely for a recovery and the nature of their relief demanded, and the clerk of the court is hereby directed and ordered to forthwith docket the said consolidated cause in accordance with this order."

And which said order was duly made on said day and date and entered on the journal of said court in each of said causes so consolidated therein.

5 In the District Court of the County of Kay and Territory of Oklahoma.

D. P. GAY and A. S. REED, as Partners as Gay & Reed ; A. M. Miller and J. B. Johnson, as Partners as Miller & Johnson ; M. Halff and S. Halff, as Partners as Halff Brothers ; R. H. Harris and W. C. Harris and William Childers, as Partners as Harris Brothers and Childers ; E. T. Comer and H. C. Comer, as Partners as Comer Brothers ; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume ; W. F. Smith and W. L. McCauley, as Partners as Smith & McCauley ; W. F. Smith, W. W. Irons, A. I. Adams ; A. I. Adams and Neal Shaffer, as Partners as Adams & Shaffer ; C. W. Burt, E. M. Hewins, I. D. Harkleroad ; Douglas Pierce and J. T. Crump, as Partners as Pierce & Crump ; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosely, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser, Plaintiffs,

vs.

A. M. THOMAS, J. B. HART, and H. B. OWEN, as the Board of County Commissioners of Kay County, Oklahoma Territory ; J. H. Lane, as County Clerk of Kay County, Oklahoma Territory ; S. J. Smock, as County Treasurer of Kay County, Oklahoma Territory, and H. C. Masters, as Sheriff of Kay County, Oklahoma Territory, Defendants.

Petition.

Come now the said plaintiffs and for their cause of action against the said defendants allege and aver the following facts, to wit :

First. That the said defendants, A. M. Thomas, J. B. Hart, and H. B. Owen, are and were at all times hereinafter mentioned the duly elected, qualified, and acting county commissioners of the county of Kay and Territory of Oklahoma.

That the said defendant, J. H. Lane, was at all times hereinafter mentioned and is now the duly elected, qualified, and acting county clerk of the county of Kay and Territory of Oklahoma.

That the said defendant, S. J. Smock, is and was at all times hereinafter mentioned the duly elected, qualified, and acting county treasurer of the county of Kay and Territory of Oklahoma, and

That the said defendant, H. C. Masters, was at all times herein-after mentioned and is now the duly elected, qualified, and acting sheriff of the county of Kay and Territory of Oklahoma.

That the plaintiffs D. P. Gay and A. S. Reed are and were at all times hereinafter mentioned partners, doing business under the firm name of Gay & Reed.

That the plaintiffs A. M. Miller and J. B. Johnson are and were at all times hereinafter mentioned partners, doing business under the firm name of Miller & Johnson.

That the plaintiffs M. Halff and S. Halff are and were at all times hereinafter mentioned partners, doing business under the firm name of Halff Brothers.

That the plaintiffs R. H. Harris, W. C. Harris, and William Chil-ders are and were at all times hereinafter mentioned partners, doing business under the firm name of Harris Brother- and Childers.

That the plaintiffs E. T. Comer and H. C. Comer are and were at all times hereinafter mentioned partners, doing business under the firm name of Comer Brothers.

That the plaintiffs W. F. Smith and W. L. McCauley are and were at all times hereinafter mentioned partners, doing business under the firm name of Smith & McCauley.

That the plaintiffs A. I. Adams and Neal Shafer are and were at all times hereinafter mentioned partners, doing business under the firm name of Adams & Shafer.

That the plaintiffs Douglas Pierce and J. T. Crump are and were at all times hereinafter mentioned partners, doing business under the firm name and style of Pierce & Crump.

6 Second. That the boundaries of the said county of Kay and Territory of Oklahoma were established by the Secretary of the Interior, the said territory comprised in said county being a part of the Cherokee outlet opened to settlement on the 16th day of September, A. D. 1893, under and by virtue of the President's pro-clamation opening the same to settlement, and the Secretary of the Interior established the boundaries of such county as follows, to wit :

The said county is bounded on the north by the State of Kansas, on the east by the Arkansas river, on the south by the Ponca Indian reservation and by the sixth standard parallel, and on the west by the range line between ranges two and three west.

That immediately upon the opening of the said Cherokee outlet to settlement a county government was established in said Kay county

and within the boundaries herein described, and that the boundaries of said county have remained unchanged from thence until the present time.

Third. That the supreme court of the Territory of Oklahoma, on the third Monday of February, 1894, and by order duly entered on the journal of said court, attached to the said county of Kay aforesaid all of the following Indian reservations and territory, to wit:

All of the Kaw or Kansas Indian reservation and all of the Osage Indian reservation north of the township line dividing townships twenty-five and twenty-six north.

That all of said territory is without the boundaries of the said Kay county as established by the Secretary of the Interior, and that the said order of the supreme court aforesaid attached the said territory to said county of Kay for judicial purposes, and for judicial purposes only, and for no other purpose whatever, and that no other change has ever been made in the boundaries of the said county of Kay and Territory of Oklahoma, by virtue of any other authority or pretended authority whatever, than the annexation of the said Indian reservations to the said county for judicial purposes, as aforesaid, and that no extension of the boundaries of the said county of Kay have ever been made or attempted to be made by any authority whatever except the order of the supreme court of said Territory hereinbefore referred to.

Fourth. That the third Legislative Assembly of the Territory of Oklahoma, by the act approved March 5th, 1895, being article six of chapter forty-three of the Session Laws of said Territory for the year 1895, attempted to provide for the assessment and taxation in Oklahoma of cattle kept and grazed and any other personal property situated in any unorganized country, district or reservation in the county to which such country, district or reservation is attached for judicial purposes.

That, in pursuance of said act of the Legislative Assembly of said Territory, the board of county commissioners of said county of Kay appointed a special assessor for the purpose of assessing all of the personal property in said Kaw Indian reservation and in said Osage Indian reservation north of said township line, and the said assessor did by virtue of such appointment assess all of the personal property in the said territory so attached to the said county of Kay for judicial purposes, and returned to the county clerk of said county an assessment-roll of the property by him attempted to be assessed in said territory attached to said county of Kay for judicial purposes.

Fifth. That none of the plaintiffs in this action have at any time owned any personal property whatever situated or located within the county of Kay and Territory of Oklahoma, according to the proper boundaries thereof.

That the said territory attached to the said county of Kay and Territory of Oklahoma for judicial purposes comprises the Kaw or Kansas Indian reservation and a part of the Osage Indian reservation, and is comprised wholly of lands owned, paid for, and occupied by said Indian tribes, and consist principally of wild, unin-

proved, and unallotted lands, which said wild, unimproved, and unallotted lands which were not needed for allotment have been leased to these plaintiffs for grazing purposes by the Osage and Kaw Indian tribal governments, under the supervision of the agent in charge of said tribes and with the ratification and approval of the Commissioner of Indian Affairs and of the Secretary of the Interior, for grazing purposes, as provided by act of Congress.

That these plaintiffs, during the year 1895 and during the month of April of said year, at the commencement of the grazing season,

drove, transported, and shipped to the ranges and pastures,
7 in said Indian reservations large herds and quantities of cattle, which were taken onto said reservations in pursuance of and by virtue and authority of said leases with the said Indian tribes, together with other articles of personal property necessary and needful in herding, grazing, and caring for said cattle, and that the said plaintiffs did not at any time have any other personal property during the year 1895 upon said Indian reservations aforesaid and within said territory attached to said county of Kay for judicial purposes than is hereinbefore set forth, and the said cattle hereinbefore referred to is the same identical property upon which the taxes herein complained of are attempted to be levied.

That the plaintiffs are all residents of the State of Kansas, the State of Texas, and other States, all of the said plaintiffs are non-residents of the territory of Oklahoma, and that the greater portion of said property was, for the year 1895, valued and assessed by the authorities of the States from whence the same was removed to the said Osage and Kaw Indian reservations prior to its removal to the said territory attached to the said Kay county, as aforesaid, for judicial purposes, and that such property of these plaintiffs, in pursuance of such assessment and valuation in the States from whence the same was removed to said Indian reservations, was duly taxed for the year 1895, and that such taxes are a valid and subsisting charge against the plaintiffs and each of them personally and against all of the property and estates of the plaintiffs located in such foreign States, and are enforceable against the estates and property of the said plaintiffs located within the jurisdiction of such other States and Territories, and said taxes can and will be collected from the property and estates of the plaintiffs located therein.

That none of said property of these plaintiffs was in Kay county, nor was the greater portion thereof within the said Territory attached to said Kay county for judicial purposes at the time when other property in Kay county was valued for taxation, to wit, the first day of February, A. D. 1895, but that the greater part of the property of the said plaintiffs attempted to be valued and assessed by the authorities of said county of Kay and Territory of Oklahoma was located and removed into the said territory attached to said Kay county for judicial purposes after the first day of April, A. D. 1895, and before the first day of May, A. D. 1895.

That the said cattle, by reason of natural growth and increase in the market value and improvement in their condition, had greatly and substantially improved and increased in value between the first day

of February, A. D. 1895, and the first day of May, A. D. 1895; that the same class and kind of property located in said Kay county, and also located and kept throughout the Territory of Oklahoma during the same period improved and increased in value likewise and to the same extent, and that the same class of property located in said Territory did, during such period, greatly and substantially increase in value between such dates and during the same time.

Sixth. That the said special assessor assessed and valued the property of these plaintiffs, so located on said territory attached to said county of Kay and Territory of Oklahoma for judicial purposes as aforesaid, and assessed the same and returned the same upon said assessment-roll hereinbefore referred to at a total valuation of \$760,469.00.

That thereafter the said sum was, by the clerk of said county, unlawfully and without authority, carried into the aggregate assessment for said county and by him certified to the auditor of said Territory.

That thereafter the territorial board of equalization, in acting upon the various assessments for the various counties as certified to said board, raised the aggregate valuation of the property in said county of Kay and Territory of Oklahoma thirty-five per cent., and the county clerk of said county unlawfully carried out the said raised valuation so certified to him by said territorial board of equalization against the property of these plaintiffs an aggregate valuation of \$1,026,634.00 as the valuation of their said property.

A schedule showing the amount for which each of these plaintiffs were assessed by the said special assessor and the valuation of each individual assessment of these plaintiffs, as extended by the county clerk, on account of the action of the territorial board of equalization, and the amount of taxes levied and extended against the property of each of these plaintiffs, is as follows:

8 Name of plaintiff.	Valuation as fixed by special assessor.	Valuation as fixed by Ter. board.	Amount of taxes ex- tended.
D. P. Gay and A. S. Reed, partners as Gay & Reed.....	\$123,800	\$167,130	\$4,278 53
A. M. Miller and J. B. Johnson, as partners as Miller & Johnson	22,190	29,957	766 90
M. Halff and S. Halff, as partners as Halff Brothers.....	85,790	115,817	2,964 92
R. H. Harris, W. C. Harris, and William Childers, as partners as Harris Brothers & Childers	61,950	83,633	2,241 00
E. T. Comer and H. C. Comer, as partners as Comer Brothers	52,435	70,787	1,812 00
Jesse H. Pugh.....	17,105	23,092	591 16
J. H. Carney	19,340	26,109	668 39
G. M. Carpenter	40,172	54,232	1,388 34
Virgil Herard.....	51,675	69,761	1,785 98
G. T. Hume.....	59,970	80,690	2,065 66
W. F. Smith and W. L. McCauley, as partners as Smith & McCauley.....	8,030	10,840	277 50
W. F. Smith	624	842	21 55
W. W. Iron	6,750	9,113	233 29
G. W. Burt	25,945	35,026	896 66
A. I. Adams.....	6,600	8,100	207 36
A. I. Adams and Neal Shafer, partners as Adams & Shafer.....	29,705	40,102	1,026 61
E. M. Hewins	18,520	25,002	640 05
Douglas Pierce and J. T. Crump, as partners as Pierce & Crump.....	6,445	8,700	222 72
James Stone	14,440	19,494	499 04
W. M. Holloway	8,840	11,934	305 51
R. H. Mosely	41,125	57,125	1,462 40
Drury Warren	8,200	11,070	283 39
T. J. Moore	42,315	57,125	1,462 40
J. M. Slater	13,820	18,657	477 62
R. W. Prosser	14,050	18,968	485 59
I. D. Harkleroad.....	2,400	3,240	82 94

That the said valuation and assessment of the said special assessor of the property situated in said territory attached to the

county of Kay and Territory of Oklahoma for judicial purposes was made on the first day of May, A. D. 1895.

Seventh. That thereafter the territorial board of equalization levied and duly certified to the county clerk of the county of Kay and Territory of Oklahoma tax levies for territorial purposes for the year 1895 as follows, to wit:

General revenue, three mills on the dollar;

University fund, one-half mill on the dollar;

Normal school fund, one-half mill on the dollar;

Bond interest fund, one-half mill on the dollar;

Board of education fund, one-tenth mill on the dollar;

making a total of four and six-tenths mills on each dollar of valuation for the purpose of taxation, levied by the territorial board of equalization for territorial purposes.

That thereafter the board of county commissioners of the county of Kay and Territory of Oklahoma made the following levies for the year 1895, to wit:

For salaries, five mills on the dollar;

For contingent expenses, three mills on the dollar;

For sinking fund, one and one-half mills on the dollar;

For court expenses, two and one-half mills on the dollar;

For county supplies, three mills on the dollar;

For road and bridge fund, two mills on the dollar;

For poor fund of said county, one mill on the dollar;

For county school purposes, three mills on the dollar;

making a total, for county purposes, of twenty-one mills on the dollar of valuation, levied in said county for the year 1895, by the board of county commissioners of said county, for county purposes.

That the county clerk of said county of Kay and Territory of Oklahoma carried the valuations of the property of these plaintiffs on the tax-rolls of said county and extended against the same, according to the county and territorial levies aforesaid, and charged to the same taxes in the aggregate sum of \$26,174.16 for the year 1895. A detailed statement showing the amount of taxes charged against these plaintiffs and each of them is fully set forth in the above schedule.

Eighth. The plaintiffs allege that the action of the territorial board of equalization in attempting to raise the valuation of the property of these plaintiffs, and the action of the county clerk in attempting to extend the same, and such raised valuation on the tax books of said county against these plaintiffs is null and void in this, to wit:

First. That said board has no power or jurisdiction to alter the assessment of property made or attempted to be made in such unorganized territory and reservations attached to the counties of the Territory of Oklahoma for judicial purposes.

Second. Because the attempted raise so made by said territorial board of equalization aforesaid, was not an equalization, but was an attempt upon the part of the said territorial board of equalization to make an assessment which they thought would conform nearer to the value of the property in said Territory than that made by

the local assessor; that the territorial board of equalization raised the aggregate valuation of all the counties in said Territory except the county of Kingfisher, which they permitted to remain in the aggregate as returned to said board by the county clerk of said county and adopted the rate of valuation in Kingfisher county as their standard of valuation for all of the counties of the Territory, and raised the aggregate valuation of the other counties from five to seventy-five per cent. to bring the valuation up to what they conceived to be the standard adopted in said Kingfisher county, and which action on the part of said territorial board of equalization the said plaintiffs allege to be wholly unauthorized and void.

Ninth. The plaintiffs allege and aver that all the proceedings looking to the assessment and taxation of these plaintiffs are null and void for the following reasons, to wit:

(1.) Because the said article six (6) is local and special legislation; that by the laws of said Territory the property of the residents of the counties in said Territory is assessed and valued at its value on the first day of February in each year, whereas, the property of these plaintiffs located in said unorganized country attached to said county of Kay for judicial purposes, is valued as of the first day of May, at a time when it possesses substantially a greater value than the same class of property possesses on the first day of February.

(2.) Because personal property which is brought into any organized county of the Territory after the first day of February and before the first day of September is not taxable if the same shall have been assessed for taxation in some other State or Territory for that

year; whereas, the property of these plaintiffs that was
10 brought into said unorganized country from other States and Territories after the 1st day of February and after having been assessed for thae year 1895 for taxation, is taxed regardless of the fact that it has already been taxed for the year 1895 in the States and Territories from whence it was brought.

That the said act makes an unequal discrimination in taxing different kinds of personal property, in violation of the organic act of this Territory.

That the said Osage and Kaw Indian reservations are not now and never have been a part of the county of Kay or a part of the Territory of Oklahoma for the purposes of taxation; that the residents of said Indian reservation do not receive from said Kay county any police or other protection.

That the said Indian reservations are not a part of said county; that the residents of said Indian reservations have no voice in creating the indebtedness for which said taxes are levied to pay; that they have no voice in the election of the officers for the payment of whose salaries said levies are made; that they have no voice or benefit from the contingent fund of said county and for which the three mills' levy is made; that they have no voice in the creation of the indebtedness and derive no benefit from such debt for which the sinking fund is provided in said county.

That they have no protection from the court expenses incurred in said county and no voice in its expenditure; that the said Kay

county does not furnish to the residents of said Indian reservations any court facilities other than such as are furnished to citizens of other States and Territories, and that the levy of two and one-half mills made for that purpose is entirely without any benefit to the residents of said Indian reservations; that they have no interest in the county supplies or other county levies.

That they do not participate in the benefit of the schools of said county of Kay nor the construction of roads and bridges therein, nor do they receive any benefit or have any voice in the expenditure of the poor fund of said Kay county, nor do the residents of the said Indian reservations derive any benefits from the said poor fund, as the same is wholly expended for the use and benefit of the residents of the said Kay county.

That the said act is illegal in that it attempts to tax the property situated in said Indian reservations for the benefit of the residents of said Kay county, and that all of said taxes are illegal and void and are unjust discriminations and exactions upon the residents of said Osage Indian reservation and said Kaw Indian reservation for the benefit of the residents of said Kay county and of said Territory.

That the said act is void and unconstitutional in this: It is in violation of the organic act of said Territory of Oklahoma in this, to wit, that it only provides for the assessment and taxation of cattle kept and grazed and other personal property situated in said Osage Indian reservation and Kaw Indian reservation and other Indian reservations, and does not provide for the taxation of real estate or of any personal property, save and except cattle and other tangible personal property, and the said law, by reason thereof, is a discrimination in taxation between different kinds of personal property in that it exempts from taxation all real estate and choses in action and credits situated and located in said unorganized territory and reservations attached to organized counties for judicial purposes.

That there was in said Indian reservations at the time of the passage of said act and on the first day of May and is now large quantities of real estate and rights of way and station grounds of railroad companies of great value that are real estate, together with choses in action, credits, and other intangible property that under the provisions of said act are not taxable and cannot be taxed.

That the said Osage Indian reservation and the said Kaw Indian reservation are not properly a part of the Territory of Oklahoma for the purpose of taxation for territorial purposes, nor do the residents of said Indian reservation participate in the benefits of the territorial government, but that the said taxation throughout is taxation for a private, and not for a public, use and is an illegal and unequal exaction, not in behalf of and for the use and benefit of the Territory of Oklahoma and the courts therein, but is exacted for the private use and benefit of the residents of said Territory.

11 That the property of these plaintiffs was taken into said reservations under and by virtue of leases executed by said Indian tribes, by and through the Indian agent as aforesaid, under

the provisions of the laws of Congress, and approved by the Secretary of the Interior and the Commissioner of Indian Affairs, and that such taxes attempted to be levied on the property of these plaintiffs will result directly in impairing the power of the said Indians to lease their said lands, and will impair the revenue derived therefrom, and will operate as a tax upon the said Indians.

Tenth. That the said defendants have extended their levies, against the valuation of the property of these plaintiffs, as herein-before set out, and at the date of the commencement of this suit were threatening to and would, except for the temporary injunctions heretofore granted in the various causes consolidated herein, have issued tax warrants and other process for the seizure of the property of the said plaintiffs and the collection of said taxes, and that the said defendants will, unless perpetually enjoined therefrom, attempt to collect and collect the said unlawful taxes as aforesaid from the property of the said plaintiffs.

Wherefore the said defendants pray that the temporary injunction heretofore granted be continued in force, and that the said defendants and each of them be perpetually enjoined from collecting or attempting to collect any of the said taxes so attempted to be assessed against the property of these plaintiffs, and that they may recover the costs of their several actions consolidated herein, and for such other and further relief as to the court may seem equitable and just.

ASP, SHARTEL & COTTINGHAM,
Attorneys for Plaintiffs.

TERRITORY OF OKLAHOMA, }
Kay County. } ss:

Henry E. Asp, of lawful age, being first duly sworn, upon his oath deposes and says that he is one of the attorneys for plaintiffs; that he has read the above and foregoing petition and know- the statements and allegations therein contained, and that the same are true in substance and in fact, as he is informed and verily believes, and that the said plaintiffs are each absent from said county.

HENRY E. ASP.

Sunscrived in my presence and sworn to before me this 8th day
of January, A. D. 1896.

[SEAL.] JNO. H. HAVIGHORST,
Clerk of the District Court of Kay County,
Oklahoma Territory.

And thereupon said cause is duly docketed by the clerk of said court.

And afterwards and on the 8th day of January, A. D. 1896, the same came on to be heard, and the defendants filed their demurrer in said cause; which said demurrer is in words and figures following, to wit:

"In the District Court of the County of Kay and Territory of Oklahoma.

D. P. GAY and A. S. REED, as Partners as Gay & Reed ;
 A. M. Miller & J. B. Johnson, as Partners as Miller & Johnson ; M. Halff and S. Halff, as Partners as Halff Brothers ; R. H. Harris and W. C. Harris and William Childers, as Partners as Harris Brothers & Childers ; E. T. Comer and H. C. Comer, as Partners as Comer Brothers ; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume ; W. F. Smith and W. L. McCauley, as Partners as Smith & McCauley ; W. F. Smith, W. W. Irons, A. I. Adams ; A. I. Adams and Neal Shafer, as Partners as Adams & Shafer ; C. W. Burt, E. M. Hewins, I. D. Harkleroad ; Douglas Pierce and J. T. Crump, as Partners as Pierce & Crump ; James Stone, W. M. Holloway, Jessre H. Pugh, R. H. Mosely, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser, Plaintiffs,

v.g.

12 A. M. THOMAS, J. B. HART and H. B. OWEN, as
 The Board of County Commissioners of Kay
 County, Oklahoma Territory ; J. H. Lane, as County
 Clerk of Kay County, Oklahoma Territory ; S. J.
 Smock, as County Treasurer of Kay County, Okla-
 homa Territory, and H. C. Masters, as Sheriff of Kay
 County, Oklahoma Territory, Defendants.

Demurrer.

Come now the defendants and each of them for himself and demurs to the petition of the plaintiffs filed herein and to the relief demanded by the said plaintiffs and each of them, jointly and severally, for the reason that the said petition fails to state facts sufficient to constitute a cause of action in favor of said plaintiffs or either of them and against the said defendants or either of them.

C. A. GALBRAITH,
Attorney General, and
 D. L. WEIR,
County Attorney.

Afterwards and on the 8th day of January, A. D. 1896, said cause came on for trial in its regular order upon the said demurrer and the following proceedings were had, to wit :

In the District Court of the County of Kay and Territory of Oklahoma.

D. P. GAY and A. S. REED, as Partners as Gay & Reed; A. M. Miller and J. B. Johnson, as Partners as Miller & Johnson; M. Halff and S. Halff, as Partners as Halff Brothers; R. H. Harris and W. C. Harris and William Childers, as Partners as Harris Brothers & Childers; E. T. Comer and H. C. Comer, as Partners as Comer Brothers; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume; W. F. Smith and W. L. McCauley, as Partners as Smith & McCauley; W. F. Smith, W. W. Irons, A. I. Adams; A. I. Adams and Neal Shafer, as Partners as Adams & Shafer; C. W. Burt, E. M. Hewins, I. D. Harkleroad; Douglas Pierce and J. T. Crump, as Partners as Pierce & Crump; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosely, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser, Plaintiffs,

Journal Entry.

vs.

A. M. THOMAS, J. B. HART, and H. B. OWEN, as the Board of County Commissioners of Kay County, Oklahoma Territory; J. H. Lane, as County Clerk of Kay County, Oklahoma Territory; S. J. Smock, as County Treasurer of Kay County, Oklahoma Territory, and H. C. Masters, as Sheriff of Kay County, Oklahoma Territory, Defendants.

Now, on this 8th day of January, A. D. 1896, said cause comes on to be heard and tried in its regular order upon the demurrer of the defendants to the petition of the plaintiffs, and the various plaintiffs above named appearing by Messrs. Asp, Shartel & Cottingham, their attorneys, and the defendants above named appearing by Hon. C. A. Galbraith, attorney general, and Hon. David L. Weir, county attorney of Kay county, their attorneys; which said demurrer, by consent of parties in open court, is carried to the relief demanded in whole or in part, and by further agreement of parties said cause is submitted to the final consideration of said court upon the said demurrer and upon the said petition, and it is agreed between the parties in open court that the court may render final judgment, subject to exceptions and appeal, upon the law as applied to the facts stated in said petition, granting to the said plaintiffs any or all relief to which they may be entitled under the allegations of said petition and denying to the said plaintiffs any or all relief to which the court may be of the opinion under the law the said plaintiffs are not entitled, neither of the parties waiving any of their substantial rights further than to submit the whole controversy to the court for such determination as is warranted under the law

and the facts stated in said petition, disregarding the sufficiency or insufficiency of the questions involved by demurrer.

13 And thereupon said cause is duly argued to the court by counsel and submitted to the consideration of the court; and the court, after hearing the argument and being duly advised in the premises, sustains the said demurrer in part and overrules the same in part in the following particulars, to wit:

It is the opinion of the court that the said property located in the Kaw Indian reservation and in that part of the Osage Indian reservation attached to the county of Kay for judicial purposes is not subject to taxation in the said county of Kay for either or any of the following county purposes, to wit:

For salaries, for contingent fund, for sinking fund, for county supplies, for road and bridge fund, for county poor fund, and for county school fund, for which total levies are shown by said petition to have been made against the property of said plaintiffs located in said Indian reservations as aforesaid of eighteen and one-half mills, which levies so attempted to be made against the property of the said plaintiffs for the year 1895, is hereby adjudged to be null and void.

The court is of the opinion that the following county and territorial levies attempted to be extended against the property of the plaintiffs in this action for the year 1895 are valid and legal, to wit:

For court expenses, two and one-half mills, and for territorial revenue, four and six-tenths mills, and that said property is subject to taxation for the year 1895 for such purposes.

To which said finding and adjudication of the court, holding said property of said plaintiffs not subject to taxation for the purposes hereinbefore named, the said defendants and each of them duly excepted and except; and to which said ruling of the court, holding the said levy of two and one-half mills for court expenses and four and sixth-tenths mills for territorial revenue valid and legal, the plaintiffs and each of them duly excepted and except.

It is further by the court considered, ordered, adjudged, and decreed that the said plaintiffs do have a perpetual injunction, and that the said defendants and each of them, and the successors and agents and each of them, be forever and perpetually restrained and enjoined from either levying or collecting or attempting to levy or collect either or any of the following-named taxes for the year 1895, to wit:

For salaries, five mills.

For contingent fund, three mills.

For sinking fund, one and one-half mills.

For county supplies, three mills.

For road and bridge fund, two mills.

For poor fund of said county, one mill.

For county school fund, three mills.

And that said defendants and each of them be forever and perpetually enjoined from levying or attempting to levy or collecting or attempting to collect either or any part or parcel of the tax levies above described.

It is by the court considered, ordered, adjudged, and decreed that the prayer of the plaintiffs for a perpetual injunction as to the following portions of said tax levies for 1895 be, and they are hereby denied, to wit:

The county levy of two and one-half mills for court expenses and the territorial levies as follows: For general revenue, three mills; for university fund, one-half mill; for normal school fund, one-half mill; for bond interest fund, one-half mill; for board of education fund, one-tenth mill, and that the temporary injunction heretofore granted in this cause against the levy and collection of such portions of the tax levied and assessed against the property of the plaintiffs be, and the same are hereby, vacated, dissolved, and held for nought, and that the extension of a tax levy against the property of the said plaintiffs assessed in the Kaw Indian reservation and in that part of the Osage Indian reservation attached to Kay county for judicial purposes be duly extended against said property and collected of the said plaintiffs as follows, to wit:

14	Name of plaintiff.	Valuation as fixed by Ter. board.	Extension un- der order of court.
D. P. Gay and A. S. Reed, as partners as Gay & Reed.....	\$167,130	\$1,186 62	
A. M. Miller and J. B. Johnson, as partners as Miller & Johnson	29,957	212 69	
M. Halff and S. Halff, as partners as Halff Brothers	115,817	822 30	
R. H. Harris, W. C. Harris, and Wm. Childers, as partners as Harris Brothers & Childers	83,633	593 79	
E. T. Comer and H. C. Comer, partners as Comer Brothers.....	70,787	502 59	
Jesse H. Pugh.....	23,092	163 95	
J. H. Carney	26,109	185 37	
G. M. Carpenter	54,232	385 05	
Virgil Herard	69,761	495 09	
G. T. Hume	80,690	572 90	
W. F. Smith and W. L. McCauley, as partners as Smith & McCauley	10,840	76 96	
W. F. Smith.....	842	5 98	
W. W. Irons.....	9,113	64 70	
C. W. Burt.....	35,026	248 68	
A. I. Adams.....	8,100	57 51	
A. I. Adams and Neal Shafer, as partners as Adams & Shafer	40,102	284 72	
E. M. Hewins.....	25,002	177 51	

Name of plaintiff.	Valuation as fixed by Ter. board.	Extension un- der order of court.
Douglas Pierce and J. T. Crump, as partners as Pierce & Crump.....	\$8,700	\$61 77
James Stone.....	19,494	138 40
W. M. Holloway.....	11,934	84 73
R. H. Mosely	57,125	405 59
Drury Warren.....	11,070	78 60
T. J. Moore	57,125	405 59
J. M. Slater	18,657	132 46
R. W. Prosser	18,968	134 67
I. D. Markleroad.....	3,240	23 00

And that the said defendants may proceed to levy and collect against the property of said defendants, without restraint, the several amounts of taxes shown in the foregoing statement.

To which order, judgment, and decree of the court granting said perpetual injunction against the levy and collection of certain taxes attempted to be levied and extended against the property of said plaintiffs and each and every part of said order the said defendants and each of them duly excepted and except; and to which said order, judgment, and decree of the court holding a part of said taxes legal and valid and denying a perpetual injunction against their levy and collection, and to said order vacating said temporary injunction heretofore granted, in part, and to each and every part of said order, judgment, and decree the said plaintiffs and each of them duly excepted and except; which said exceptions by the said plaintiffs and defendants are allowed by the court, and by the court directed to be entered of record in said cause.

15 And thereupon the said plaintiffs ask the court to fix a time within which they may file their petition in error in the supreme court of the Territory of Oklahoma to review the order and judgment of this court vacating and modifying the temporary injunction heretofore granted in their behalf, and the court, being duly advised in the premises, orders that the said plaintiffs shall file their petition in error in the supreme court of said Territory on or before the 13th day of January, A. D. 1896, and pending the filing of said petition in error and until the date fixed the judgment and order modifying said temporary injunction shall remain inoperative, and in case said plaintiffs in error shall file their petition in error to review said order and judgment within the time limited, then the operation of said order modifying and vacating said temporary injunction shall remain inoperative pending the final disposition thereof in the supreme court of said Territory.

It is further considered, ordered, and adjudged by the court that the costs in this action be divided between the parties hereto, the plaintiffs to pay three-tenths of the same and the defendants seven-tenths thereof.

Dated this 8th day of January, A. D. 1896.

A. G. C. BIERER,
*Judge of the District Court of Kay
 County, Oklahoma Territory.*

The above and foregoing case-made presents all of the material matters upon which the above and foregoing case was tried, the same having been decided and judgment rendered upon the facts stated in the petition filed in said consolidated case.

Service of the above and foregoing case-made is hereby accepted this eighth day of January, A. D. 1896, and time to suggest amendments is waived, and we hereby consent that the same may be presented to the court at this time for signing and settlement.

**C. A. GALBRAITH,
 D. L. WEIR,**
Attorneys for Defendants.

16 In the District Court of the County of Kay and Territory of Oklahoma.

D. P. GAY and A. S. REED, as Partners as Gay & Reed; A. M. Miller and J. B. Johnson, as Partners as Miller & Johnson; M. Halff and S. Halff, as Partners as Halff Brothers; R. H. Harris and W. C. Harris and William Childers, as Partners as Harris Brothers and Childers; E. T. Comer and H. C. Comer, as Partners as Comer Brothers; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume; W. F. Smith and W. L. McCauley, as Partners as Smith & McCauley; W. F. Smith, W. W. Irons, A. I. Adams; A. I. Adams and Neal Shafer, as Partners as Adams & Shafer; C. W. Burt, E. M. Hewins, I. D. Harkleroad; Douglas Pierce and J. T. Crump, as Partners as Pierce & Crump; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosely, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser, Plaintiffs,

vs.

A. M. THOMAS, J. B. HART, and H. B. OWEN, as the Board of County Commissioners of Kay County, Oklahoma Territory; J. H. Lane, as County Clerk of Kay County, Oklahoma Territory; S. J. Smock, as County Treasurer of Kay County, Oklahoma Territory, and H. C. Masters, as Sheriff of Kay County, Oklahoma Territory, Defendants.

Order.

Now, on this 8th day of January, A. D. 1896, is presented to me, the undersigned judge of the above-named court, being the same

judge who tried the above-entitled cause, the above and foregoing case-made for signing and settlement, and after examining the proof of service I find that the attorneys for defendants have waived the suggestion of amendments and the time to suggest amendments, and having consented in writing that the cause may be signed and settled at this time, and after having carefully examined the above and foregoing case-made, I find that the same speaks the truth with reference to the proceedings set out therein.

And it is therefore by me ordered that the same be, and the same is hereby, settled and signed as the case-made in said cause.

And it is further by me ordered that the clerk of said court do sign and attest said case-made and file the same in said cause as the case-made therein.

In witness whereof I have hereto set my hand this 8th day of January, A. D. 1896.

A. G. C. BIERER,
*Judge of the District Court of Kay
County, Oklahoma Territory.*

Attest: JNO. H. HAVIGHORST,

[SEAL.] *Clerk of the District Court of Kay
County, Oklahoma Territory.*

The above and foregoing case-made filed in the district court of the county of Kay and Territory of Oklahoma this 8th day of January, A. D. 1896.

JNO. H. HAVIGHORST,
*Clerk of the District Court of Kay
County, Oklahoma Territory.*

Endorsement: #412. In the district court of Kay county, Oklahoma Territory. D. P. Gay and A. S. Reed, as partners as Gay & Reed, *et al.*, plaintiffs, vs. A. M. Thomas *et al.*, defendants. Case-made. Filed Jan. 8th, '96. Edgar W. Jones, clerk supreme court.

17 In the Supreme Court, Territory of Oklahoma.

D. P. GAY and A. S. REED, as Partners as Gay & Reed ; A. M. Miller and J. B. Johnson, as Partners as Miller & Johnson ; M. Half and S. Half, as Partners as Half Brothers ; R. H. Harris and W. C. Harris and William Childers, as Partners as Harris Brothers & Childers ; E. T. Comer and H. C. Comer, as Partners as Comer Brothers ; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume ; W. F. Smith and W. L. McCauley, as Partners as Smith & McCauley ; W. F. Smith, W. W. Irons, A. I. Adams : A. I. Adams and Neal Shaffer, as Partners as Adams & Shafer ; C. W. Burt, E. M. Hewins, I. D. Markleroad ; Douglas Pierce and J. T. Crump, as Partners as Pierce & Crump ; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosely, Drury Warran, T. J. Moore, J. M. Slater, and R. W. Prosser, Plaintiffs in Error,

Cross-petition
in Error.

vs.

A. M. THOMAS, J. B. HART, and H. B. Owne, as the Board of County Commissioners of Kay County, Oklahoma Territory ; J. H. Lane, as County Clerk of Kay County, Oklahoma Territory ; S. J. Smock, as County Treasurer of Kay County, Oklahoma Territory, and H. C. Masters, as Sheriff of Kay County, Oklahoma Territory, Defendants in Error.

Come now the defendants in error herein and for their cross-petition in error allege that by the case-made in this cause by the plaintiffs in error there appears manifest error against the substantial rights of these defendants in the following particulars, to wit :

First. The court erred in holding that the county levies of—
 For salaries, five mills on the dollar ;
 For contingent expenses, three mills on the dollar ;
 For sinking fund, one and one-half mills on the dollar ;
 For county supplies, three mills on the dollar ;
 For road and bridge fund, two mills on the dollar ;
 For poor fund, one mill on the dollar ; and
 For county school purposes, three mills on the dollar, were illegal.

Second. The court erred in granting a perpetual injunction against the levy and collection of the said levies hereinbefore referred to an- each of them.

Third. The court erred in holding that the said territory so attached to the county of Kay and Territory of Oklahoma for judicial purposes was no part of said county for taxation for the county purposes hereinbefore enumerated and each of the same.

Wherefore the said defendants in error pray that the action of

the said district court in granting the perpetual injunction against such levies and each of the same and in holding the same to be illegal and void be reviewed and reversed and the said cause remanded with instructions to enter judgment in favor of said defendants in error upon the said petition for an injunction denying the said perpetual injunction and dissolving the temporary injunctions theretofore granted in said cause, and for such other and further relief as to the court may seem equitable and just.

D. L. WEIR,
County Attorney,
C. A. GALBRAITH,
Attorney General,
Attorneys for Defendants in Error.

Endorsed : Cross-petition in error. Filed in the supreme court, at Guthrie, Oklahoma Territory, January 8th, 1896. Edgar W. Jones, clerk.

18 In the Supreme Court of Oklahoma Territory, Regular June Term, 1896.

D. P. GAY and A. S. REED, as Partners as Gay & Reed, *et al.*,
vs.
A. M. THOMAS, J. B. HART, and H. B. OWEN, as the Board of
County Commissioners of Kay County, Oklahoma Territory,
et al.

And now, to wit, on this the fifth day of June, A. D. 1896, this cause coming on the regular call of the docket for hearing, both on the petition in error and cross-petition in error, was argued by Henry E. Asp, John W. Shartel, Horace Speed, and W. W. Flood for plaintiffs in error and by Mr. Attorney General Galbraith and D. L. Weir, Esq., for defendants in error and cross-petitioners, was submitted and taken under advisement.

19 Regular June Term, 1896.

D. P. GAY and A. S. REED, as Partners
as Gay & Reed, *et al.*,
vs.
A. M. THOMAS, J. B. HART, and H. B. Owen, as the Board of County Commissioners of Kay County, Oklahoma Territory, *et al.*

SEPTEMBER 4TH, 1896.

This cause having been heretofore argued and submitted, and the court being sufficiently advised thereon, it is now here considered, ordered, and adjudged that the judgment of the district court therein be, and the same is hereby, in all things affirmed and the prayer of the petition in error and cross-petition in error denied; to which plaintiffs and defendants each and both severally except. Exceptions allowed.

20 In the Supreme Court of the Territory of Oklahoma.

D. P. GAY *et al.* }
vs.
A. M. THOMAS *et al.* }

1. **Taxation—Power of legislature in imposing, extent of.**—The power of taxation is not an arbitrary power, nor can it be exercised capriciously. It is hedged about and restricted by wise constitutional limitations and fixed general rules. These constitutional limitations and general rules are designed to secure a just apportionment of the burdens of government by requiring uniformity of contributions, levied by fixed and general rules and apportioned by the law, according to some uniform measure of equality. Within these rules and limitations the authority and power of the legislative department is absolute and conclusive.
2. **Taxation—Legislative discretion in.**—The discretion of the legislature in matters of taxation is very broad and its exercise may work injustice and oppression. The judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively, but if it does not clearly violate some established rule or limitation the responsibility of the legislature is not to the courts but to the people by whom its members are elected. The courts can only interfere when the conclusion is unavoidable that the legislature has transcended its powers or clearly violated some constitutional or other fixed general rule defining or limiting such powers.
3. **Indian reservations—Taxation of property therein.**—In the absence of any provisions or stipulations in the treaties by which the Indians were settled on the reservations in this Territory that the lands in such reservations should not, without the consent of the Indians occupying them, be included within the limits or jurisdiction of any State or Territory that might thereafter be created and which should include such reservation within its exterior boundaries the authority of the Territory may extend over such reservation in all matters of rightful legislation not interfering with the persons or property of the Indians under the protection of the United States. As to all matters and subjects of rightful legislation not interfering with that protection and not otherwise repugnant to the Constitution and laws of the United States the legislative power of the Territory is as absolute in and upon these reservations as in any other part of this Territory.
4. **Taxation of property on Indian reservations.**—Taxation is a rightful subject of legislation. It is the duty of the territorial legislature to apportion the burdens of government upon all property within the Territory not withdrawn from its jurisdiction by the organic act or otherwise exempted. The property of United States citizens not connected with the Indians kept

upon these reservations is a part of the mass of property within the Territory receiving the protection of its laws and subject to taxation. It was, therefore, the right and duty of the legislature to subject such property to taxation.

5. **Taxation of cattle of citizens on Indian reservations not an impairment of the rights of the Indians.**—Taxation of cattle of white men kept and grazed upon Indian reservations under leases from the Indians is not a taxation of any right or property of the Indians. The taxation in controversy in this case was not assessed or levied upon the real estate or upon the rents of real estate belonging to the Indians, and was therefore not invalid as interfering with the property rights of the Indians under the protection of the United States and withdrawn from the jurisdiction of the Territory, nor obnoxious to the principle of *Pollock vs. Farmers' Loan and Trust Company*, 157 U. S., 429, even if the constitutional provision governing that case was operative upon any other legislative body than the Congress of the United States or in the raising of revenue for any other government than the Federal Government, which it was not.
6. **Taxing districts established by legislature, not by courts.**—The establishing of taxing districts is a legislative not a judicial function. The taxing district comprising the county of Kay and the attached Indian reservations and unorganized country was not created by the order of the supreme court attaching such Indian reservations and unorganized country to Kay county for judicial purposes, but by the act of March 5th, 1895. The supreme court attached such territory to Kay county for judicial purposes and the legislature adopted and made the district thus created a taxing district.
7. **Taxation—Discrimination between classes of property.**—What is not.—An act providing for the taxation of personal property alone in a district where there is no real estate subject to taxation is not invalid as discriminating in taxing different kinds of property. Courts will take judicial knowledge of the treaties of the United States with Indian tribes and from those treaties that the title to the lands in the Indian reservations in this Territory is in the Indian tribes or in the United States for the benefit of the Indians and that there is no real estate therein subject to taxation.
8. **Taxation—Purposes of validity.**—Taxation must be for purposes in which the people taxed have a legal interest. Property which is located upon an Indian reservation and which is attached to a county of the Territory for judicial purposes, but is not within the geographical boundaries of the county and is not a part of the county for municipal purposes and in which the people thereof have no voice in the selection of the county and other officers and no part of the fund derived from the taxes levied can be expended for the purposes for which they were levied within such Indian reservation, and which taxes when collected are to be appropriated entirely to the expenses

of the county roads and schools within the organized county, cannot be taxed for the various county, school, and road purposes of such county. The property on such reservation can only be taxed for territorial and judicial purposes.

9. Laws, special—What are.—See *Daily Leader vs. Cameron*, 3 Okla., 677.
10. Taxation—Assessment—Uniformity as to time of.—An act providing for listing and assessing personal property in Indian reservations and unorganized territory at a different time from that fixed for listing and assessing such property in organized counties is not invalid for want of uniformity. Taxes must be assessed according to some uniform rule; but this does not mean that the time and method of assessment shall be identical, but only that after the legislature has declared what classes of property shall be subject to taxation the tax itself shall be levied upon such property or the owner thereof according to a uniform rate of valuation.

21 Error from the district court of Kay county.

Asp, Shartel & Cottingham, for plaintiffs in error; Mr. Att'y General Galbraith and D. L. Weir, for defendants in error.

The opinion of the court was delivered by—

TARSNEY, J.:

Statement of Facts.

The plaintiffs in error are non-residents of the Territory of Oklahoma and owners of large herds of cattle that were kept and grazed, during a portion of the year 1895, in parts of the Osage Indian reservation in this Territory.

The defendants in error are the board of county commissioners, treasurer and sheriff of Kay county, Oklahoma Territory.

On the third Monday in February, 1894, the supreme court of the Territory of Oklahoma, by an order entered on the journals of said court, attached to said county of Kay, for judicial purposes, all the Kaw or Kansas Indian reservation and all of the Osage Indian reservation north of the township line dividing townships 25 and 26 north. All of said reservations so attached to said Kay county for judicial purposes by such order are without the boundaries of said Kay county as established by the Secretary of the Interior and are not within the boundaries of any organized county of this Territory. Said territory so attached to said county of Kay for judicial purposes is comprised wholly of lands owned and occupied by Indian tribes, and consists principally of wild, unimproved, and unallotted lands used for grazing purposes; that plaintiffs in error during the year 1895 and during the month of April of said year drove, transported, and shipped to the ranges and pastures in that part of said Osage Indian reservation attached to said Kay county for judicial purposes, as aforesaid, large herds and numbers of cattle, which were taken onto said reservation in pursuance and by virtue and authority of certain leases to plaintiffs in error for grazing pur-

poses made by the Osage tribal government under the supervision of the agent in charge of said tribe and upon the ratification and approval of the Commissioner of Indian Affairs and of the Secretary of the Interior, and said cattle of said plaintiffs in error were on the first day of May kept and grazed on that part of said Indian reservation attached to said Kay county for judicial purposes, as aforesaid.

By an act approved March 5, 1895, the Legislative Assembly of the Territory of Oklahoma amended section 13, article 2, chapter 70, of the Oklahoma Statutes relating to revenue, so that the same reads as follows: "That when any cattle are kept or grazed or any other personal property is situated in any unorganized country, district or reservation of this Territory, such property shall be subject to taxation in the organized county to which said country, district or reservation is attached for judicial purposes," and authorized the board of county commissioners of the organized county or counties to which such unorganized country, district, or reservation is attached to appoint a special assessor each year, whose duty it should be to assess such property, and conferred upon such special assessor all the powers and required him to perform all the duties of a township assessor. The assessor so provided for was required to begin and perform his duties between the first day of April and the 25th day of May of each year and to complete his duties and return his tax-lists on or before June 1st, and the property therein authorized to be assessed, it was provided, should be valued as of May 1st, each year.

In pursuance of the provisions of said act the county commissioners of said Kay county did duly appoint a special assessor for the year 1895 to assess such cattle as were kept and grazed and any other personal property situated in the unorganized country and parts of Indian reservations attached to said Kay county for judicial purposes, and said special assessor did, by virtue of said

22 appointment, assess all the personal property in the territory so attached to the county of Kay for judicial purposes, including all of the cattle of the said plaintiffs in error kept and grazed in said reservation on the first day of May, 1895. The said special assessor assessed the property of these plaintiffs in error so located on said territory attached to said county of Kay for judicial purposes, as aforesaid, and returned the same upon an assessment-roll at the total valuation of \$760,469.00; that thereafter the said sum was, by the clerk of said county, carried into the aggregate assessment for said county, and by him certified to the auditor of the Territory; that the territorial board of equalization in acting upon the various assessments of the various counties as certified to said board raised the aggregate valuation of the property returned for taxation upon the tax-rolls of said county of Kay thirty-five per cent., and the county clerk for said county carried out the raised valuation so certified to him by said territorial board of equalization against the property of these plaintiffs in error and made the aggregate valuation of such property \$1,026,634.00. Thereafter the territorial board of equalization levied and duly certified to the county

clerk of the county of Kay tax levies for territorial purposes for the year 1895 as follows:

General revenue, three mills on the dollar;

University fund, one-half mill on the dollar;

Normal school fund, one-half mill on the dollar;

Bond interest fund, one-half mill on the dollar;

Board of education fund, one-half mill on the dollar.

That the board of county commissioners for the county of Kay made the following levies for the year 1895:

For salaries, five mills on the dollar;

For contingent expenses, three mills on the dollar;

For sinking fund, one and one-half mills on the dollar;

For court expenses, two and one-half mills on the dollar;

For county supplies, three mills on the dollar;

For road and bridge fund, two mills on the dollar;

For poor fund of said county, one mill on the dollar;

For county school fund of said county, one mill on the dollar.

The county clerk of said county of Kay carried the valuation of the property of these plaintiffs in error upon the tax-rolls of said county, and against the same extended the levies as aforesaid, and charged against the property of these plaintiffs in error in the aggregate the sum of \$26,174.16.

Before these taxes became delinquent, plaintiffs in error began to remove or attempted to remove their respective property from the territory attached to Kay county for judicial purposes and beyond the limits of Oklahoma Territory. The treasurer of said Kay county issued tax warrants for the several amounts of taxes levied against the property of each of said plaintiffs in error, and delivered the same to the sheriff of said county for execution; said sheriff seized certain property of each of plaintiffs in error by virtue of such tax warrants. The plaintiffs in error filed their several petitions in the district court of Kay county, and on application obtained injunctions restraining the defendants in error from making any further attempt to collect such taxes. Afterwards, on motion, the several actions were consolidated into one. To the petition filed in such consolidated action the defendants in error filed a general demurrer. At the hearing the district court sustained the demurrer in part and overruled it in part, holding that all of the levies made for territorial purposes and the county levy for court expenses were valid; and as to those levies the injunction was dissolved, and as to all of the other county levies such injunctions were made perpetual. From that part of the order and judgment of the court dissolving the injunction as to the territorial taxes and the one county fund levy plaintiffs appealed. From that part perpetuating the injunction as to all of the county levies, except that for court expenses, the defendants appealed and filed their cross-petitions in error, and the case is thus here for review.

Opinion of the Court.

The questions involved are of great public and private interest and have received from us that very careful consideration and attention which their importance demands.

By section six of the organic act of the Territory, it is provided—

"That the legislative power of the Territory shall extend to all rightful subjects of legislation, not inconsistent with the Constitution and laws of the United States, but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed on the property of the United States nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents, nor shall any law be passed impairing the right to private property, nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to taxation shall be taxed in proportion to its value."

* * *

A broader grant of legislative power than that contained in this section could hardly be conceived of. This organic act of the Territory defined its boundaries, created a government which comprised a legislative department, vested with power of legislating upon all rightful subjects of legislation and coextensive with the exterior boundaries of the Territory. The taxing power is a part of the legislative power of government, and taxation is a rightful subject of legislation. Taxes are the enforced contributions upon persons or property levied by the government by virtue of its sovereignty for the support of government and for public needs. The citizen pays from his property the portion demanded in order that by means thereof he may be secured in the enjoyment of the benefits of organized society. The power is unlimited in its reach as to subjects; in its very nature it acknowledges no limit; it is sometimes said that in its exercise it may become a power to confiscate or to destroy, but this must be thus qualified, that under our system of constitutional governments it differs from the forced contributions, loans, and benevolences of arbitrary and tyranical governments. It is not an arbitrary power, nor can it be exercised capriciously. It is hedged about and restricted by wise constitutional limitations and fixed general rules. These constitutional limitations and general rules are designed to secure a just apportionment of the burdens of government by requiring uniformity of contributions levied by fixed general rules and apportioned by the law according to some uniform measure of equality.

Within these rules and limitations the authority and power of the legislative department is absolute and conclusive. The ends sought to be reached by these general and fundamental rules and constitutional restrictions upon the powers of taxation are equality, uniformity, and justice in apportioning the burdens of government, but as the idea of exact equality, uniformity, or justice under any system of human laws being attainable is utopian, it is not expected that such exactness can be attained in the exercise of the powers of

taxation. Notwithstanding such fixed general rules and limitations, the discretion of the legislature is very broad and its exercise may work injustice and oppression. If such discretionary power be threatened with abuse, security must be found in the responsibility of the legislature that imposes the tax to the constituency that elected them. The judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons or with regard to property, but if it do not clearly violate some established rule of limitation, the responsibility of the legislature is not to the courts, but to the people by whom its members are elected. The courts can only interfere when the conclusion is unavoidable that the legislature has transcended its powers or clearly violated some constitutional or other fixed general rule defining or limiting such power.

Veazie Bank v. Feno, 8 Wall., 548.

Weston v. Charleston, 2 Peters, 449-466.

Lane County v. Oregon, 7 Wall., 71.

Tallman v. Butler, 12 Iowa, 531.

Our inquiry, then, is, did the legislature, by the act of 1895,
24 under authority of which the taxes in controversy was as-
sessed and levied, transcend its powers, and is such act a vi-
olation of any constitutional or other fixed general rule controlling
the discretion of the legislature?

The only limitation or restriction upon the taxing power of the legislature which I find in the organic act for the Territory is that contained in section six (6) of said act, which is as follows:

"No tax shall be imposed on the property of the United States nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents, nor shall any law be passed impairing the right to private property, nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to taxation shall be taxed in proportion to its value."

And the following provision in section one (1) of said act:

"Provided, that nothing in this act shall be construed to impair any right now pertaining to any Indians or Indian tribe in said Territory under the laws, agreements and treaties of the United States or to impair the rights of person or property pertaining to said Indians, or to affect the authority of the Government of the United States to make any regulation or to make any law respecting said Indians, their lands, property or other rights which it would have been competent to make or enact if this act had not been passed."

If, therefore, there be any restriction or limitation upon the power of the legislature to tax the property of plaintiffs or which makes such taxation invalid, it must be found in these provisions of the organic act or in the Constitution, treaties, or legislation of the United States or some general rule inherent in our system of government. It is not contended that the act under which these taxes

are sought to be imposed is obnoxious to any provision of the Federal Constitution, but it is contended by plaintiffs that the legislature has no jurisdiction to enact laws, especially tax laws, and put the same in force in these Indian reservations, the argument being that, although these reservations are within the exterior boundaries of Oklahoma Territory, yet they comprise no part of the Territory for territorial governmental purposes, but are exclusively under the jurisdiction of the United States, and that the legislative power of the Territory does not extend over them. It is conceded by counsel for plaintiffs that the treaty under which the Osage Indians were settled on these lands contained no provision or stipulation by which said Indian tribe or the lands occupied by them were not without their consent to be included within the limits or jurisdiction of any State or Territory that might thereafter be created and which should include such reservation within its exterior boundaries; that there was at the time the organic act creating the Territory of Oklahoma was passed and at the time the act of 1895 authorizing the taxation in controversy was enacted and at the time these taxes were assessed and levied no treaty with the Osage Indian tribe that the lands or any part thereof within this reservation should be thus excluded from the limits and jurisdiction of any State or Territory.

I think there is no proposition better settled by authorities than that in the absence of such treaty stipulation the authority of the Territory may rightfully extend over such reservation in all matters of rightful legislation not interfering with the persons and property of the Indians within such reservation under the protection of the laws and authority of the United States, and that as to all matters and subjects of rightful legislation not interfering with that protection and not otherwise repugnant to the Constitution and laws of the United States the legislative power of the Territory is absolute.

Utah & Northern Railway *v.* Fisher, 116 U. S., 28.

Langford *v.* Monteith, 102 U. S., 145.

Phoenix and Maricopa R. R. Co. *v.* Arizona Territory, *sup.*
court of Ariz., 26 Pac. Rep., 310.

Maricopa & Phoenix R. R. Co. *v.* Ariz. Ter., 156 U. S., 347.

Torrey *v.* Baldwin, 26 Pac. Rep., 908.

Gou-Shay-ee, petitioner, 130 U. S., 343.

Ex parte Crow Dog, 109 U. S., 556-560.

U. S. *v.* Kagama, 118 U. S., 375.

United States *v.* Pridgeon, 153 U. S., 48.

This doctrine was distinctly held by this court in *Keokuk v. Ulam*, 4 Okla., 38 Pac. Rep., 1083. The contention of plaintiffs upon this proposition would seem to be based upon reasonings and authorities which are not applicable. Their contention seems to be that these reservations are to be considered as exclusively under the jurisdiction of the United States, the same as lands purchased by the United States within the boundaries of States, and with the consent of said States for the purposes of forts,

arsenels, magazines, navy yards, dock yards, etc. If this contention were correct, then it would be supported by all the authorities and would prevail, for I concede it to be uncontroverted that property situated wholly within boundaries exclusively within the jurisdiction of the United States cannot be taxed by the State or Territory within which it may be situated; but these reservations are not within boundaries exclusively within the jurisdiction of the United States for the reason that Congress, in section six (6) of the organic act of this Territory, delegated to the government of the Territory legislative power extending to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States within the exterior boundaries of the Territory created by that act, which includes the reservation which is the locus of this controversy; that the jurisdiction conferred upon the Territory is not exclusive; that Congress has reserved to itself jurisdiction over the persons and lands of the Indians occupying the reservation does not diminish or restrict the authority of the Territory to legislate concerning the persons and property of citizens of the United States therein. It was the duty of the territorial legislature to apportion the burdens of government upon all property within the Territory not withdrawn from its jurisdiction by the organic act or other laws of the United States or not otherwise exempted from such burden by law. The property of the plaintiff comprised a part of the mass of property within the Territory which was receiving the protection of its laws and which might lawfully be and should justly be subjected to taxation. And the right to subject such property to taxation, under the conditions and the situation in which plaintiff's property was, has not been denied by any court, but has been upheld in numerous instances.

Utah Northern R'y v. Fisher, 116 U. S., 28.

Torrey v. Baldwin, 26 Pac. Rep., 908.

Phoenix & Maricopa R. R. Co. v. Ter. of Ariz., 26 Pac. Rep., 310.

Ferris v. Vennier, 6 Dacotah, 42 N. W. Rep., 34.

Marico & Phoenix R. R. Co. v. Ariz. Ter., 156 U. S., 347.

In *Torrey v. Baldwin*, 26 Pac. Rep., 908, *supra*, the supreme court of Wyoming held that the treaty of July 3rd, 1868, with the Shoshones, pursuant to which their reservation was established, contained no reservation or exception whereby it should be excluded and excepted out of the Territory within which it was situated and that the reservation was included within the Territory, and that cattle thereon belonging to a white person in no wise connected with the Indians were subject to taxation in the county within which the reservation lay.

In *Phoenix and Maricopa Railroad Company v. Arizona Territory*, *supra*, the supreme court of Arizona held that in the absence of treaty or other express exclusions the different Indian reservations became a part of the Territory where situate and subject to territorial legislative jurisdiction, subject however to the powers of the General Government to make regulations respecting the Indians, their property, etc., and that a railroad built across an Indian reser-

vation in the Territory is subject to taxation by the Territory where there are no treaty stipulations or express exclusions against the jurisdiction of the Territory, and this decision was, on appeal, affirmed by the Supreme Court of the United States in 156 U. S., 347, *supra*.

In *Utah Northern Railway v. Fisher*, 116 U. S., 31, Mr. Justice Field says:

"The authority of the Territory may rightfully extend to all matters not interfering with that protection. (Protection of Indians and their property.) It has therefore been held that process of its courts may run into an Indian reservation of this kind where the subject-matter or controversy is otherwise within their cognizance. If the plaintiff lawfully constructed and now operates a railroad through the reservation it is not perceived that any just rights of the Indians under the treaty can be impaired by taxing the road

and property used in operating it."

26 A further contention of the plaintiffs is: That this reservation, under the statutes of the United States, has been leased by the Osage nation or tribe for grazing purposes, and that the taxation of cattle kept and grazed upon said reservation is a direct tax upon the right of the Indians to lease the same, and decreases to the extent of the tax the value of the Indian lands; that the act authorizing such taxation is in direct derogation of the property rights of the Indians upon such reservation, and is therefore void. This proposition is without merit, and certainly is unsupported by authority. The authority upon which plaintiffs rely to support this contention is the case of *Pollock v. The Farmers' Loan and Trust Company*, 157 U. S., 429, known as the Income Tax case. Counsel in their brief quote from Mr. Chief Fuller on page 555 in the report of that case as follows:

"The contention of the plaintiff is, first, that the law in question, in imposing a tax upon the income or rents of real estate, imposes a tax upon the real estate itself, and in imposing a tax upon the interest or income of bonds or other personal property held for the purpose of income or ordinarily yielding income imposes a tax upon the personal estate itself; that such tax is a direct tax and void, because imposed without regard to the rule of apportionment, and that by reason thereof the whole law is invalid."

It is true that that contention was sustained by a majority of a divided court in that case, but I am unable to perceive its application to the principles of the case at bar. The contention was sustained in that case, because it was held that a tax upon the income or rents of real estate imposed a tax upon the real estate itself; that it was therefore a direct tax, and that, being such, it was obnoxious to the provision of the Constitution prohibiting the levy of direct taxes except by apportionment among the several States. It would not be seriously contended that that provision of the Federal Constitution prescribed a rule operative upon any other legislative authority than the Congress of the United States, or in the raising of revenue for the support of any government other than the Federal Government; but even if such contention should be made the

principle of the case cited is not broad enough to cover the proposition submitted by counsel for plaintiffs. The taxation we are considering was not assessed or levied upon the real estate or other property of the Indians occupying this reservation, nor upon the income or rents of such Indians derived from such real estate or other property. This tax is not levied upon the rents which are paid to these Indians under their leases to the plaintiffs, but it is levied upon the property of the plaintiffs, in which the Indians have no interest. The argument that taxation upon property brought into this reservation for the purpose of grazing upon Indians' lands is an additional servitude that decreases the salable value of the land, and that it operates in fixing the rental value of these lands to the same extent it would if made a tax upon the land itself is scarcely less remote than to say that the tariffs which these cattle-owners have to pay to railroad corporations for transporting their cattle out of these reservations to market is an additional servitude that decreases the rental value of the lands of the Indians, or that the taxation of the personal property of a tenant is an added servitude on the freehold of the landlord. I do not think the act of the legislature providing for this taxation in any manner impairs the property rights of the Indians occupying this reservation.

Another contention of the plaintiffs is that this taxation is unconstitutional and void because it rests upon the attempt of the supreme court of the Territory to fix taxing districts, which is a legislative function. The answer to this proposition is that the supreme court of the Territory has not attempted to fix any taxing districts; that that court, under the powers expressly invested in it by the organic act of the Territory, in 1894, attached this reservation and unorganized country to Kay county for judicial purposes, and not for the purpose of taxation; that the taxing districts in which these taxes were imposed and levied *was* created and fixed, *bot* by the supreme court, but by the legislature in the act of 1895, the language of the act being:

"That when any cattle are kept or grazed or any other personal property is situated in any unorganized country, district or reservation of this Territory, that such property shall be subject to taxation in the organized county to which said country, district or reservation is attached for judicial purposes."

27 It was by this act that a taxing district was created and not by the order of the court.

Another objection which plaintiffs make against the legality of this tax is, that the act attempting to authorize it only applies to personal property; that no provision is made for the taxing of real estate in such reservation; that it is a discrimination in taxing different kinds of property, and, therefore, in conflict with the organic act.

This court will take judicial knowledge of the public treaties of the United States, and from such treaties the court has judicial knowledge that the title to all the lands within this Indian reservation is in the Indian tribe or in the United States for the use of said Indian tribe. The power of taxation possessed by the territorial

government, not extending to the taxing of the property of the United States or of the Indian wards of the United States, there is no taxable real estate in said reservation, and consequently the act does not discriminate as between different kinds of property subject to taxation, there not being different kinds of property subject to taxation in such reservation.

The most serious contention of the plaintiffs that confronts us in this matter is, that the act under which these taxes were assessed and levied is void for the reason that it attempts to tax property situated in these Indian reservations for the benefit of the counties to which they are attached for judicial purposes. The owners and holders of property on these Indian reservations, it being claimed, have no interest in the taxes gathered by said counties, no voice in their expenditure nor benefit therefrom, said Indian reservation not being within the geographical boundaries of said counties; that the taxing of the owners of said property by such counties is taking the property of the persons holding said property on said reservation for the benefit of the residents of said county, and is, therefore, taking private property for private uses.

It is argued that plaintiffs have no interest in the purposes for which these taxes are to be expended and will derive no benefit from their expenditure; that the moneys derived from this taxation under the county levy will all be expended within the organized county of Kay; that plaintiffs are non-residents of the Territory and that neither they or their property are within said county of Kay, and, therefore, cannot be benefited by the expenditure of moneys apportioned and used for the salary fund, contingent expense fund, sinking fund, court expense fund, county supplies fund, road and bridge fund, poor fund, or county school fund of said county.

We have been cited to or been able to find but one authority directly in point upon the proposition as presented in this case. In the case of *Ferris v. Vennier*, 42 N. W. Rep., 34, the supreme court of Dakota Territory, in a case similar to this in all particulars save that the attached territory was not an Indian reservation but was unorganized territory, held the levy for territorial purposes to be valid and those for county purposes to be invalid. There are a number of authorities upon analogous cases, but such authorities are conflicting. The greater number of authorities presented by counsel for plaintiffs in their brief upon this proposition relate to cases of special assessments for local improvement such as the construction of highways, streets, pavements, sewers, etc., where the benefits are peculiar to a limited district or locality and this class of cases have always been held distinct in principle from that which we are considering, and the right to impose such taxes has always been held to be founded upon and to be governed by different principles from those embraced in public taxation for ordinary public or governmental purposes.

Bearing upon the case at bar is the case of *Wells v. The City of Weston*, 22 Mo., 384, in which the court held that "The legislature cannot authorize a municipal corporation to tax for its own local purposes land lying beyond the corporate limits."

28 In *Cheany v. Hooser*, 9 Ben. Monroe, 341, the court held that the extension of the limits of one town so as to include the adjacent lands of another town, against or without the consent of the owners, and subject the property and people within the added territory to the jurisdiction and taxing powers of the extended municipal government without the consent of the added population is in effect taking private property for public use.

In *Sharpless v. Mayor of Philadelphia*, 21 Penn. State, 172, the court said : "By taxation is meant a certain mode of raising revenue for a public purpose in which the community that pays it has an interest ; but to make a tax law unconstitutional on this ground it must be apparent at the first blush that the community taxed can have no possible interest in the purpose to which their money is to be applied ; and this is more especially true if it be a local tax and if the local authorities have themselves laid the tax in pursuance of an act of the assembly."

In a case in Tennessee, *Taylor, McBean & Co. v. William R. Chandler et al.*, 9 Heiskall, 349, the court said : "A State burden cannot be placed upon any territory less than the entire State nor a county burden upon territory greater or smaller than the county."

In the case of *Washington Avenue*, 69 Penn. State, 361, the learned judge, delivering the opinion, says :

"I admit that the powers to tax is unbounded by any express limit in the constitution ; that it may be exercised to the full extent of the public exigency. I concede that it differs from the power of eminent domain and has no thought of compensation by way of a return for that which is taken and applied to the public good further than all derive benefit from the purpose to which it is applied."

In *Monford v. Unger*, 8 Iowa, 82, the court said :

"The extension of the limits of a city or town so as to include its actual enlargement as manifested by houses and population is to be deemed a legitimate exercise of legislative power. An indefinite or unreasonable extension, so as to embrace lands and farms that are distant from the local government, does not rest upon the same authority ; and, although it may be a delicate as well as a difficult duty for the judiciary to interpose, we have no doubt but that there are limits beyond which the legislative discretion cannot go."

Kelley v. The City of Pittsburg, 104, U. S., 658, was a case wherein the city of Pittsburg, under an act of the legislature, extended the city limits so as to include the plaintiff's farm and assessed the same as other property in the city was assessed for street tax, school tax, etc., the court in sustaining the validity of the extension said :

"We cannot say judicially that Mr. Kelley received no benefit from the city organization. These streets, if they do not penetrate his farm, lead to it. The water works will probably reach him some day and may be near enough him now to serve on some occasions. The schools may receive his children, and in this regard he can be in no worse condition than those living in the city having no children and who pay for the support of the schools. Every man in a county, a town, a city, a State is deeply interested in the education

of the children of the community, because his peace and quiet, his happiness and prosperity are largely dependent upon the intelligence and moral training which it is the object of the public schools to supply to the children of his neighbors and associates, if he has none himself. The police government, the officers whose duty it is to punish and prevent crime, are paid out of the taxes. He has no interest in their protection, because he lives farther from the courthouse and police station than the others. Clearly these are matters of detail within the legislative discretion, and therefore of power in the law-making body within whose jurisdiction the parties live. This court cannot say in such cases, however great the hardships or unequal the burden, that the tax collected for such purposes is taking the property of the tax-payers without due process of law."

I might multiply citations from conflicting authorities like these without finding any rule to guide or definitely determine where the line can be drawn which determines in cases like this the limit of legislative discretion.

Nearly if not all these cases arose to test the extent and limit of authority in subordinate agencies of the State, like municipal corporations, and not the discretion vested in the legislature of the State. No court has yet attempted to define specifically the benefits that a tax payer must receive from government in order to make valid the public taxes taken from him. True, in theory, taxation should be equal, not only in its burdens but its benefits, but this equality is never attained. No one questions the right of a Commonwealth to tax the property of non-residents within its borders, yet such non-residents do not stand upon a basis of equality in the benefits of the government that imposes the tax. They may or may not receive particular benefits from its courts, its schools, the improvement of its public highways, or from any of the other purposes to which its revenues are appropriated; but such benefits are never a test of the liability of their property to taxation. The plaintiffs in this case might have their herds of cattle within the limits of Kay county and receive no greater benefit in the protection of the laws than they do now; yet they would not be heard to assert that such property should not be taxed for the various county purposes to which taxation is appropriated.

The counties, cities, and towns of this Territory are not independent or distinct governments from that of the Territory. They are a part of that government; they are the instrumentalities and agencies through which the territorial government promotes the welfare of its inhabitants and through which the Territory is better enabled to protect the lives and liberties of its inhabitants and the property that is within its borders, whether that of its own citizens or that of non-residents. The nearer these purposes are attained, the greater are the benefits to these plaintiffs, as well as to all others having property subject to the protection of its laws.

Laws similar to this attaching unorganized territory to municipal townships in the State of Michigan were for years maintained and enforced; and though the taxes gathered from the attached territory was appropriated and expended for the purposes of the town-

ship to which it was attached, I do not find that their validity was ever directly called into question.

Roscommon v. Midland, 39 Mich., 424.

Township of Comins v. Township of Harrisville, 45 Mich., 442.

In this last case the facts found by the court were that from the year 1869 until March, 1877, the county of Oscoda was attached to the county of Alcona for judicial and municipal purposes, and up to the last-named date the township of Harrisville, in said Alcona county, exercised municipal jurisdiction over the territory comprising the unorganized county of Oscoda; that in 1877 the legislature organized the county of Oscoda unto a township called by the act creating it "the township of Comins." In that year and after the passage of said act, but before said township of Comins had been fully organized by the election of township officers, the township of Harrisville made an assessment-roll embracing, with other territory, all the territory in the county of Oscoda, and the taxes thus assessed were collected by the officers of the township of Harrisville. In 1879 the township of Comins made a demand on the township board of the township of Harrisville for the payment to the township of Comins for the taxes thus collected in 1877 and suit was brought therefor. On that case Marston, chief justice, says:

"The laws of this State relating to the assessment, levy, and collection of taxes does not regard certain designated territory as a township until the proper officers necessary to conduct its affairs have been elected. The officers of the new township not having been elected until July, there was no such perfected organization as would enable that township to assess the township and school taxes for that year. Under such circumstances, in my opinion, the township of Harrisville had a right to levy and collect the taxes in question, but, whether they did nor not, the present action will not lie to recover the money so collected."

I can perceive no distinction in principle between that case and the case at bar; and although the legality of the assessment and collection of the taxes imposed was not directly involved in the case, both the circuit judge trying the case and the chief justice express no doubt as to their legality.

Not being able to point the provision in the Constitution, the organic act in any statute, or general rule limiting the powers and discretion of the legislature in imposing these taxes, from which I can say that they are unquestionably void, I am not disposed to arbitrarily invade the province of the legislative department to sit in review, without other evidence than that which they possessed, and say that in this case they have abused the discretion vested in them to such a degree as to call for our interference. Under the general rules stated herein, we have no right to do this.

30 This taxation may not be levied upon the basis of absolute equality. It may in a measure be unjust. It may impose upon the plaintiffs in this case a burden without equal compensa-

tion in benefits with others, but this alone will not warrant our interference.

Unquestionably the plaintiffs are benefited in some degree by the expenditure of these taxes in Kay county. The proximity to their property of a well-ordered community, with courts and schools open to the plaintiffs if they wish to avail themselves of them, with good roads and bridges, with provision made for the care and maintenance of the poor and indigent—with these and other elements of civilization, order, and observance of law for which money obtained by taxation is expended, it is beyond dispute that plaintiffs have a greater security in their property rights than they would have without them. These are the benefits upon which the right of taxation is based and gives to the legislature the acknowledged authority to impose taxation. The authority being acknowledged, the reasonableness of or necessity for its exercise cannot be inquired into by the courts. Of such reasonableness or necessity the legislature and not the courts are to judge.

The validity of these taxes is further assailed on the ground that the act of the legislature authorizing them is obnoxious to the act of Congress of July 30, 1886, 24 U. S. Stat. at Large, page 170, which provides as follows:

"That the legislature of the territories of the United States now or hereafter to be organized shall not pass local or special laws in any of the following enumerated cases—that is to say, * * * for the assessment and collection of taxes for territorial, county, township, or road purposes."

It is insisted that the act in question is local and special. I cannot perceive how this contention can be sustained. The act has none of the elements of a local or special law. It does not operate upon an individual or a number of designated individuals or upon particularly designated property; it operates upon any individual and upon any property that may come within its general provisions. Mr. Cooley in his work on Constitutional Limitations, page 480, says:

"The authority that legislates for the State at large must determine whether particular rules shall extend to the whole State and all its citizens, or, on the other hand, to a subdivision of the State or a single class of its citizens only."

Again he says, page 481:

"If the laws be otherwise unobjectionable, all that can be required in these cases is that they be general in their application to the class or locality to which they apply, and they are then public in character, and of their propriety and policy the legislature must judge."

The constitutional requirement of equal protection of the laws does not make necessary the same local regulations, municipal powers, or judicial organization or jurisdiction.

Missouri v. Lewis, 101 U. S., 32.

Virginia v. Rives, 100 U. S., 313.

Ex parte Virginia, 100 U. S., 339.

The prohibition of special legislation for the benefit of individuals does not preclude laws for the benefit of particular classes, as, for example, mechanics and other laborers.

Davis v. State, 3 Lea, 376.

We think the case of *Daily Leader v. Cameron*, 3 Okla., 677, is decisive on this point. In that case this court says:

"A statute relating to persons or things as a class is a general law; one relating to particular persons or things of a class is special. The number of persons upon whom the law shall have any direct effect may be very few by reason of the subject to which it relates, but it must operate equally and uniformly upon all brought within the relations and circumstances for which it provides. A statute, in order to avoid a conflict with the prohibition against such special legislation, must be general in its application to the class, and all of the class within like circumstances must come within its operation."

The statute in question in this case does not operate upon persons or things within a general class, but upon persons and things as a class. It operates upon all the unorganized counties, districts, and

reservations within the Territory and upon property generally within such unorganized county, district, or reservation, and operates uniformly upon such several counties, districts, and reservations and upon the persons and things that may be brought therein, and is therefore in no sense local or special in its character.

It is further claimed that the act of 1895 violates the principle of uniformity in providing for an assessment of cattle kept and grazed on these Indian reservations and unorganized territory at a different time from that provided for the assessment of personal property in the organized counties; that for this reason it unjustly discriminates against the owner of such cattle, and is therefore void.

I have already shown it to be a fundamental principle that the rules of taxation shall be uniform. It is of the very nature of a tax that it should be assessed according to some uniform rules; otherwise it would be confiscation and not taxation. But this does not mean that the time and method of assessment shall be identical, but only that after the legislature has declared what classes of property shall be subject to taxation the tax itself shall be levied upon such or the owner thereof according to a uniform rate of valuation.

Nelson Lumber Co. v. Town of Lorraine, Sup. Ct. Wis., 22 Fed. Rep., 54.

Statutory provisions authorizing the assessment of different classes of property at different dates, or of the same classes of property in different localities at different dates, are so common that their validity for this reason is scarcely ever called in question. The revenue law of this Territory provides that real estate shall be valued for taxation on the first day of January, and that personal property in the counties shall be assessed on the first day of February of each year.

Counsel for plaintiffs, in their brief, ask, "What valid reason can

be suggested why the property situated on these Indian reservations should be assessed and valued on one day and the property situated in the organized counties should be assessed and valued on another day?"

I think the answer to this question is found in the language of the supreme court of Wisconsin in *Nelson Lumber Company v. Town of Loraine, supra*, wherein it says:

"The purpose of the law would seem to be to bring about that substantial equality in taxation which the common law as well as the Constitution requires. The legislature was aware that the logs of non-residents as well as residents owners were liable to be floated out of the State in the month of April, or if not run out of the State might become mixed with the logs of other persons in the different streams in such a manner as to render it quite impracticable to take any separate account of them in the month of May, when the logs of resident owners were assessed. Very often they would be beyond the jurisdiction of the taxing officer of the town, and, as the owner could not be reached and had no local agent in the State, they escape entirely. The law, by providing that the situation, amount, and value of the logs be taken in April at the place where piled or banked, seeks to put non-resident and resident owners on the same footing."

The legislature of this Territory, when they enacted the law of 1895, undoubtedly took into consideration the peculiar conditions and situation of the property to be taxed in these reservations; that nearly all of the cattle that were kept on these reservations were brought into the Territory after the first of February and would be removed before another listing of property for taxation, and unless a different date from that existing in the general law should be fixed for its assessment, such property would entirely escape taxation. The very principle of uniformity required that this distinction in dates of assessment should be made. It was not an injustice against the owners of the property, but it was to prevent injustice to the Territory and to all its tax-paying citizens by prohibiting this property from escaping its just share of the burdens of taxation. I think this was a very proper exercise of the discretion of the legislature, and that no discrimination exists such as is inhibited by the organic act of the Territory and the act of Congress of July 30, 1886.

The final proposition contained in plaintiffs' brief, that relating to the action of the territorial board of equalization in raising the aggregate valuations of property returned from the county of Kay for the year 1895, having been fully considered and determined by this court at this term in the case of *Wallace vs. Bullen* and held adversely to the contention of the plaintiffs herein, fully disposes of this point.

32 For the reasons stated upon the various points submitted herein I am of the opinion that the legislature was vested with full authority to extend the revenue laws of the Territory over the Indian reservations and other unorganized territory within this Territory; that the act of 1895 was a proper exercise of such authority; that said act does not contravene any constitutional or

other established rule of taxation ; that I can find nothing in this record showing such abuse of the discretionary power of the legislature as warrants our interference ; that the assessment and taxation of plaintiffs' property under said act and in the manner shown was valid. I think that it follows, therefore, that the action of the court below in overruling defendants' demurrer to plaintiffs' petition, in so far as it related to the assessment and levy of said taxes for county purposes and perpetuating the injunction against the collection of such taxes, was erroneous, and the judgment of said court enjoining the collection of said taxes should be reversed and this cause be dismissed.

Scott, J., and McAtee, J., concurring to the extent of holding that the tax-levied for territorial and court expense funds are valid, but also hold that the balance of the levies are unauthorized, for the reason that the people on these reservations are not interested in such levies and receive no benefit from the expenditure of the moneys derived from such levied.

The judgment of the district court is affirmed. Dale, C. J., dissent; Bierer, J., who tried the case below, not sitting.

Endorsed: Opinion. Filed September 4th, 1896. Edgar W. Jones, clerk supreme court.

33 In the Supreme Court of the Territory of Oklahoma.

D. P. GAY and A. S. REED, as Partners as Gay & Reed ; A. M. Miller and J. B. Johnson, as Partners as Miller & Johnson ; M. Halff and S. Halff, as Partners as Halff Brothers ; R. H. Harris, W. C. Harris, and William Childers, as Partners as Harris Brothers & Childers ; E. T. Comer and H. C. Comer, as Partners as Comer Brothers ; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume ; W. F. Smith and W. L. McCauley, as Partners as Smith & McCauley ; W. F. Smith, W. W. Irons, A. I. Adams ; A. I. Adams and Neal Shafer, as Partners as Adams & Shafer ; C. W. Burt, E. M. Hewins, I. D. Harkleroad ; Douglas Pierce and J. T. Crump, as Partners as Pierce & Crump ; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosley, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser, Plaintiffs in Error and Defendants in the Cross-petition in Error,

v8.

A. M. THOMAS, J. B. HART, and H. B. OWEN, as the Board of County Commissioners of Kay County, Oklahoma Territory ; J. H. Lane, as the County Clerk of Kay County, Oklahoma Territory ; S. J. Smock, as County Treasurer of Kay County, Oklahoma Territory, and H. C. Masters, as Sheriff of Kay County, Oklahoma Territory, Defendants in Error and Cross-petitioners in Error.

Petition on
Appeal.

The above-named defendants in error and cross-petitioners in

error, conceiving themselves aggrieved by the final judgment and decree made and entered on the 4th day of September, A. D. 1896, in the above-entitled cause, do hereby appeal from said judgment and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors, which is filed herewith, and they pray that this appeal may be allowed, and that a transcript of the record, pleadings, proceedings, and papers upon which said judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 18th day of November, A. D. 1896.

D. L. WEIR,
County Attorney of Kay County, Oklahoma Territory, and
BLEVINS & KING,
Attorneys for Cross-petitioners in Error and Appellants.

The foregoing appeal is allowed this 18th day of November, A. D. 1896.

FRANK DALE,
Chief Justice.

Endorsed: In the supreme court of Oklahoma Territory. D. P. Gay and A. S. Reed, as partners as Gay and Reed, *et al. vs. A. M. Thomas, J. B. Hart, H. B. Owen, as the board of county commissioners of Kay county, Oklahoma Territory, et al.* Prayer for appeal and allowance of appeal. Filed November 18th, 1896. Edgar W. Jones, clerk.

}

34 In the Supreme Court of the Territory of Oklahoma.

D. P. GAY and A. S. REED, as Partners as Gay & Reed; A. M. Miller and J. B. Johnson, as Partners as Miller & Johnson; M. Halff and S. Halff, as Partners as Halff Brothers; R. H. Harris, W. C. Harris, and William Childers, as Partners as Harris Brothers & Childers; E. T. Comer and H. C. Comer, as Partners as Comer Brothers; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume; W. F. Smith and W. L. McCauley, as Partners as Smith & McCauley; W. F. Smith, W. W. Irons, A. I. Adams; A. I. Adams and Neal Shafer, as Partners as Adams & Shafer; C. W. Burt, E. M. Hewins, I. D. Harkleroad; Douglas Pierce and J. T. Crump, as Partners as Pierce & Crump; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosley, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser, Plaintiffs in Error,

against

A. M. THOMAS, J. B. HART, and H. B. OWEN, as the Board of County Commissioners of Kay County, Oklahoma Territory; J. H. Lane, as the County Clerk of Kay County, Oklahoma Territory; S. J. Smock, as the County Treasurer of Kay County, Oklahoma Territory, and H. C. Masters, as Sheriff of Kay County, Oklahoma Territory, Defendants in Error.

Cross-petition on Appeal.

The above-named plaintiffs in error, conceiving themselves aggrieved by the decree made and entered in this cause in the above-named court on the — day of September, A. D. 1896, do hereby appeal from the said order and decree to the Supreme Court of the United States for reasons specified in the assignment of errors, which is filed herewith, and they pray that this their appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

HENRY E. ASP,
JOHN W. SHARTEL, &
JAMES R. COTTINGHAM,
Attorneys for Plaintiffs in Error.

Now, on this 20th day of November, A. D. 1896, — is presented to me, the undersigned, the chief justice of the supreme court of the Territory of Oklahoma and one of the judges before whom said cause was tried and submitted, and after examining the foregoing petition on appeal it is by me ordered that the said appeal be, and the same is hereby, allowed, and that the said appeal be allowed in

connection with the appeal heretofore granted to the said plaintiffs in error on, to wit, the 18th day of November, A. D. 1896, and that the appeal of the said plaintiffs in error hereby allowed be, and the same is hereby, allowed as a cross-appeal, and the clerk of said court, in certifying the transcript under this appeal, is directed to certify but one transcript on the original appeal and to incorporate all papers pertaining to this cross-appeal therein.

FRANK DALE,
Chief Justice.

Endorsed : In the supreme court of Oklahoma Territory. Gay & Reed *et al.* vs. A. M. Thomas *et al.* Cross-petition on appeal. Filed November 20th, 1896. Edgar W. Jones, clerk.

35 THE UNITED STATES OF AMERICA, *ss*:

To D. P. Gay and A. S. Reed, as partners as Gay & Reed; A. M. Miller and J. B. Johnson, as partners as Miller & Johnson; M. Halff and S. Halff, as partners as Halff Brothers; R. H. Harris, W. C. Harris, and William Childers, as partners as Harris Brothers & Childers; E. T. Comer and H. C. Comer, as partners as Comer Brothers; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume; W. F. Smith and W. L. McCauley, as partners as Smith & McCauley; W. F. Smith, W. W. Irons, A. I. Adams; A. I. Adams and Neal Shafer, as partners as Adams & Shafer; C. W. Burt, E. M. Hewins, I. D. Harkleroad; Douglass Pierce and J. T. Crump, as partners as Pierce & Crump; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosley, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser, and Messrs. Asp, Shartell & Cottingham, their attorneys, Greeting:

Whereas A. M. Thomas, J. B. Hart, and H. B. Owen, as the board of county commissioners of Kay county, Oklahoma Territory; J. H. Lane, as the county clerk of Kay county, Oklahoma Territory; S. J. Smock, as county treasurer of Kay county, Oklahoma Territory, and H. C. Masters, as sheriff of Kay county, Oklahoma Territory, have lately appealed to the Supreme Court of the United States from a judgment and decree rendered in the supreme court of the Territory of Oklahoma in favor of you, the said D. P. Gay and A. S. Reed, as partners as Gay & Reed; A. M. Miller and J. B. Johnson, as partners as Miller & Johnson; M. Halff and S. Halff, as partners as Halff Brothers; R. H. Harris, W. C. Harris, and William Childers, as partners as Harris Brothers & Childers; E. T. Comer and H. C.

Comer, as partners as Comer Brothers; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume; W. F. Smith and W. L. McCauley, as partners as Smith & McCauley; W. F. Smith, W. W. Irons, A. I. Adams; A. I. Adams and Neal Shafer, as partners as Adams & Shafer; C. W. Burt, E. M. Hewins, I. D. Harkleroad; Douglass Pierce and J. T. Crump, as partners as Pierce & Crump; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosley, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser, and having filed the security required by law, you are, therefore,

hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at the city of Washington, D. C., within thirty days from the day this citation bears date, to do and to receive what may pertain to justice to be done in the premises.

Given under my hand, at the city of Guthrie, in the Territory of Oklahoma, this 18th day of November, A. D. 1896.

FRANK DALE,
Chief Justice of the Territory of Oklahoma.

Attest: EDGAR W. JONES,
Clerk Supreme Court.

Service of the within and foregoing citation is hereby accepted and admitted this 19th day of November, A. D. 1896.

[Seal Supreme Court, Territory of Oklahoma.]

ASP, SHARTEL & COTTINGHAM,
Attorneys for Plaintiffs in Error and Appellees.

[Endorsed:] No. —. Original. In the supreme court of Oklahoma. D. P. Gay and A. S. Reed, as partners as Gay & Reed, *et al.*, pl'tfs in error and appellees, *vs.* A. M. Thomas, J. B. Hart, and H. B. Owen, as the board of county commissioners of Kay county, Oklahoma Territory, *et al.*, def'ts in error and appellant-. Citation. Filed Nov. 19th, A. D. 1896. Edgar W. Jones, clerk sup. court.

37 In the Supreme Court of the United States of America.

THE UNITED STATES OF AMERICA, }
Territory of Oklahoma, } ss:

To A. M. Thomas, J. B. Hart, and H. B. Owen, as the board of county commissioners of Kay county, Oklahoma Territory ; J. H. Lane, as county clerk of Kay county, Oklahoma Territory ; S. J. Smock, as the county treasurer of Kay county, Oklahoma Territory, and H. C. Masters, as the sheriff of Kay county, Oklahoma Territory :

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, at the city of Washington, in the District of Columbia, on the 20th day of December next, pursuant to a cross-appeal filed in the office of the clerk of the supreme court of the Territory of Oklahoma, and which said cause is entitled in the supreme court of the Territory of Oklahoma as follows: "In the supreme court of the Territory of Oklahoma. D. P. Gay and A. S. Reed, as partners as Gay & Reed ; A. M. Miller and J. B. Johnson, as partners as Miller & Johnson ; M. Halff and S. Halff, as partners as Halff Brothers ; R. H. Harris, W. C. Harris, and William Childers, as partners as Harris Brothers & Childers ; E. T. Comer and H. C. Comer, as partners as Comer Brothers ; J. H. Carney, G. M. Carpenter, Virgile Herard, G. T. Hume ; W. F. Smith and W. L. McCauley, as partners as Smith & McCauley ; W. F.

Smith, W. W. Irons, A. I. Adams; A. I. Adams and Neal Shafer, as partners as Adams & Shafer; C. W. Burt, F. M. Hewins, I. D. Har-kleroad; Douglas Pierce and J. T. Crump, as partners as Pierce & Crump; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Moseley, Drury Warren, J. T. Moore, J. M. Slater, and R. W. Prosser, plaintiffs in error, against A. M. Thomas, J. B. Hart, and H. B. Owen, as the board of county commissioners of Kay county, Oklahoma Territory; J. H. Lane, as the county clerk of Kay county, Oklahoma Territory; S. J. Smock, as the county treasurer of Kay county, Oklahoma Territory, and H. C. Masters, as sheriff of Kay county, Oklahoma Territory, defendants in error," and in which said cause you have, on the 18th day of November, A. D. 1896, filed an appeal, and in which said cause the said plaintiffs in error in the said supreme court of the Territory of Oklahoma have also filed a cross-appeal, to then and there show cause, if any there be, why the judgment rendered against the said plaintiffs in error in said supreme court of Oklahoma Territory should not be reversed on their assignment of errors in their said cross-appeal, and why the said judgment of the supreme court of Oklahoma Territory should not be corrected and why speedy justice should not be done in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 20th day of November, in the year of our Lord one thousand eight hundred ninety-six, and of the Independence of the United States of America the one hundred twenty-first.

FRANK DALE,
*Chief Justice of the Supreme Court
of the Territory of Oklahoma.*

Attest: — — —, Clerk.

We hereby, on this 20th day of November, A. D. 1896, accept due personal service of this citation on behalf of the said A. M. Thomas, J. B. Hart, and H. B. Owen, as the board of county commissioners of Kay county, Oklahoma Territory; J. H. Lane, as the county clerk of Kay county, Oklahoma Territory; S. J. Smock, as the county treasurer of Kay county, Oklahoma Territory, and H. C. Masters, as sheriff of Kay county, Oklahoma Territory, appellants and cross-appellee-s.

D. L. WEIR,
Co. Atty, Kay Co., Oklahoma, and
BLEVINS & KING,
Attorneys and Solicitors for Appellants and Cross-appellees.

[Endorsed:] In the Supreme Court of the United States. Gay & Reed *et al.* vs. A. M. Thomas *et al.* Citation. Filed Nov. 20th, '96. Edgar W. Jones, clerk, S.

39 In the Supreme Court of the Territory of Oklahoma.

D. P. GAY and A. S. REED, as Partners as Gay & Reed ; A. M. Miller and J. B. Johnson, as Partners as Miller & Johnson ; M. Halff and S. Halff, as Partners as Halff Brothers ; R. H. Harris, W. C. Harris, and William Childers, as Partners as Harris Brothers & Childers ; E. T. Comer and H. C. Comer, as Partners as Comer Brothers ; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume ; W. F. Smith and W. L. McCauley, as Partners as Smith & McCauley ; W. F. Smith, W. W. Irons, A. I. Adams ; A. I. Adams and Neal Shafer, as Partners as Adams & Shafer ; C. W. Burt, E. M. Hewins, I. D. Harkleroad ; Douglas Pierce and J. T. Crump, as Partners as Pierce & Crump ; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosley, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser, Plaintiffs in Error and Defendants to Cross-petition in Error,

No. 412.

vs.

A. M. THOMAS, J. B. HART, and H. B. OWEN, as the Board of County Commissioners of Kay County, Oklahoma Territory ; J. H. Lane, as the County Clerk of Kay County, Oklahoma Territory ; S. J. Smock, as County Treasurer of Kay County, Oklahoma Territory, and H. C. Masters, as Sheriff of Kay County, Oklahoma Territory, Defendants in Error and Cross-petitioners in Error.

Know all men by these presents that we, A. M. Thomas, J. B. Hart, and H. B. Owen, county commissioners of Kay county, Oklahoma Territory ; J. H. Lane, county clerk of Kay county, Oklahoma Territory ; S. J. Smock, county treasurer of Kay county, Oklahoma Territory, and H. C. Masters, sheriff of Kay county, Oklahoma Territory, principals, and W. P. Jacobus, H. C. Brooks, J. M. Haynes, and Robert Sutherland, as sureties, are held and firmly bound unto D. P. Gay and A. S. Reed, partners as Gay & Reed ; A. M. Miller and J. B. Johnson, as partners as Miller & Johnson ; M. Halff and S. Halff, as partners as Halff Brothers ; R. H. Harris, W. C. Harris, and William Childers, as partners as Harris Brothers & Childers ; E. T. Comer and H. C. Comer, as partners as Comer Brothers ; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume ; W. F. Smith and W. L. McCauley, as partners as Smith & McCauley ; W. F. Smith, W. W. Irons, A. I. Adams ; A. I. Adams and Neal Shafer, as partners as Adams & Shafer ; C. W. Burt, E. M. Hewins, I. D. Harkleroad ; Douglas Pierce and J. T. Crump, as partners as Pierce & Crump ; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosley, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser in the full and just sum of one thousand dollars, to be paid to the said D. P. Gay and A. S. Reed, as partners as Gay & Reed ; A. M. Miller and J. B. Johnson, as partners as Miller & Johnson ; M. Halff and S. Halff, as partners as Halff Brothers ; R. H. Harris,

W. C. Harris, and William Childers, as partners as Harris Brothers and Childers; E. T. Comer and H. C. Comer, as partners as Comer Brothers; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume; W. F. Smith and W. L. McCauley, as partners as Smith & McCauley; W. F. Smith, W. W. Irons, A. I. Adams; A. I. Adams and Neal Shafer, as partners as Adams & Shafer; C. W. Burt, E. M. Hewins, I. D. Harkleroad; Douglas Pierce and J. T. Crump, as partners as Pierce & Crump; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosley, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser, their certain attorneys, executors, administrators, and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of November, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a session of the supreme court of the Territory of Oklahoma, in a suit depending in said court between D. P. Gay and A. S. Reed, as partners as Gay & Reed; A. M. Miller and J. B. Johnson, as partners as Miller & Johnson; M. Half and S. Halss, as partners as Half Brothers; R. H. Harris, W. C. Harris, and William Childers, as partners as Harris Brothers & Childers; E. T. Comer and H. C. Comer, as partners as Comer Brothers; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume; W. F. Smith and W. L. McCauley, as partners as Smith & McCauley; W. F. Smith, W. W. Irons, A. I. Adams; A. I. Adams and Neal Shafer, as partners as Adams & Shafer; C. W. Burt, E. M. Hewins, I. D. 40 Harkleroad; Douglas Pierce and J. T. Crump, as partners as Pierce & Crump; James Stone, W. M. Holloway, Jesse Pugh, R. H. Mosley, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser, plaintiffs in error and defendants to cross-petition in error, and A. M. Thomas, J. B. Hart, and H. B. Owen, as the board of county commissioners of Kay county, Oklahoma Territory; J. H. Lane, as the county clerk of Kay county, Oklahoma Territory; S. J. Smock, as county treasurer of Kay county, Oklahoma Territory, and H. C. Masters, as sheriff of Kay county, Oklahoma Territory, defendants in error and cross-petitioners in error, a final judgment and decree was rendered against the said A. M. Thomas, J. B. Hart, and H. B. Owen, as the board of county commissioners of Kay county, Oklahoma; J. H. Lane, as the county clerk of Kay county, Oklahoma Territory; S. J. Smock, as county treasurer of Kay county, Oklahoma Territory, and H. C. Masters, as sheriff of Kay county, Oklahoma Territory; and the said A. M. Thomas, J. B. Hart, and H. B. Owen, as the board of county commissioners of Kay county, Oklahoma Territory; J. H. Lane, as the county clerk of Kay county, Oklahoma Territory; S. J. Smock, as county treasurer of Kay county, Oklahoma Territory, and H. C. Masters, as sheriff of Kay county, Oklahoma Territory, have prosecuted and been allowed an appeal to the Supreme Court of the United States to reverse the judgment and decree rendered in the above-entitled action by the supreme court of the Territory of Oklahoma on September 4th, A. D. 1896, and a citation directed to said D. P. Gay and A. S. Reed,

as partners as Gay & Reed ; A. M. Miller and J. B. Johnson, as partners as Miller & Johnson ; M. Halff and S. Halff, as partners as Halff Brothers ; R. H. Harris, W. C. Harris, and William Childers, as partners as Harris Brothers & Childers ; E. T. Comer and H. C. Comer, as partners as Comer Brothers ; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume ; W. F. Smith and W. L. McCauley, as partners as Smith & McCauley ; W. F. Smith, W. W. Irons, A. I. Adams ; A. I. Adams and Neal Shafer, as partners as Adams & Shafer ; C. W. Burt, E. M. Hewins, I. D. Harkleroad ; Douglas Pierce and J. T. Crump, as partners as Pierce and Crump ; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosley, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser, citing and admonishing them to be and appear in the Supreme Court of the United States, at Washington, D. C. :

Now, the condition of the above obligation is such that if the said A. M. Thomas, J. B. Hart, and H. B. Owen, as the board of county commissioners of Kay county, Oklahoma Territory ; J. H. Lane, as the county clerk of Kay county, Oklahoma Territory ; S. J. Smock, as county treasurer of Kay county, Oklahoma Territory, and H. V. Masters, as sheriff of Kay county, Oklahoma Territory, shall prosecute said appeal to effect and answer all costs and damages if they fail to make good their plea, then the above obligation to be void ; else to remain in full force and virtue.

A. M. THOMAS,
J. B. HART,
H. B. OWEN,

*Board of County Commissioners of Kay Co.,
Oklahoma Territory.*

[Seal Kay County, Oklahoma T'y.]

[SEAL.]	J. H. LANE, <i>County Clerk of Kay Co., Oklahoma Territory.</i>	
[SEAL.]	S. J. SMOCK, <i>County Treasurer of Kay County, Oklahoma Ty.</i>	
[SEAL.]	H. C. MASTERS, <i>Sheriff of Kay Co., Oklahoma Territory.</i>	
[SEAL.]	W. P. JACOBUS, H. C. BROOKS, J. M. HAYNES, AND ROBERT SUTHERLAND.	[SEAL.] [SEAL.] [SEAL.]

The above and foregoing bond is taken and approved by me this 18th day of November, 1896.

FRANK DALE,
Chief Justice.

Sealed and delivered in the presence of—

IRA HILL,
T. J. BLEVINS.
J. F. KING.

Endorsed : In the supreme court, Oklahoma Territory. D. P. Gay and A. S. Reed, as partners as Gay & Reed, *et al. vs. A. M.*

Thomas, J. B. Hart, and H. B. Owen, as the board of county commissioners of Kay county, Oklahoma Territory, *et al.* Bond on appeal. Filed November 18th, 1896. Edgar W. Jones, clerk.

41 In the Supreme Court of the Territory of Oklahoma.

D. P. GAY and A. S. REED, as Partners as Gay & Reed ; A. M. Miller and J. B. Johnson, as Partners as Miller & Johnson ; M. Halff and S. Halff, as Partners as Halff Brothers ; R. H. Harris, W. C. Harris, and William Childers, as Partners as Harris Brothers & Childers ; E. T. Comer and H. C. Comer, as Partners as Comer Brothers ; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume ; W. F. Smith and W. L. McCauley, as Partners as Smith & McCauley ; W. F. Smith, W. W. Irons, A. I. Adams ; A. I. Adams and Neal Shafer, as Partners as Adams & Shafer ; C. W. Burt, E. M. Hewins, I. D. Harkleroad ; Douglas Pierce and J. T. Crump, as Partners as Pierce & Crump ; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosley, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser, Plaintiffs in Error and Defendants in Cross-petition in Error,

versus

A. M. THOMAS, J. B. HART, and H. B. OWEN, as the Board of County Commissioners of Kay County, Oklahoma Territory ; J. H. Lane, as the County Clerk of Kay County, Oklahoma Territory ; S. J. Smock, as County Treasurer of Kay County, Oklahoma Territory, and H. C. Masters, as Sheriff of Kay County, Oklahoma Territory, Defendants in Error and Cross-petitioners in Error.

TERRITORY OF OKLAHOMA, }
Kay County, } 88 :

S. J. Smock, being first duly sworn, on his oath says: I am one of the defendants herein and the S. J. Smock mentioned in the above cause. I am and have been the county treasurer of Kay county, Oklahoma Territory, since the 8th day of January, A. D. 1895, and as such county treasurer have and during all of said time have had in my possession the books, papers, records, and belongings of said office. I have read and know the contents of the petition herein and on which the above cause was tried in the district court of the fourth judicial district within and for the county of Kay, in the Territory of Oklahoma, and I have read and know the contents of the judgment and decree of the said district court of Kay county, Oklahoma, rendered herein, and from which this appeal was prosecuted, and I have read and know the contents of the decree and decision of the supreme court of the Territory of Oklahoma rendered on the appeal and proceedings in error herein. I know and am familiar with the taxes, assessments, levies, and matters in controversy in this suit and the values and amounts thereof; that the taxes, the collection of which were enjoined by the judgment and decision of the said district and supreme court herein,

amounted to more than sixteen thousand dollars, exclusive of penalties, interest, and costs, at the date of each of said judgments and decisions, and that no part of the same have been paid; that the same is claimed by cross-petitioners in error herein.

And I further swear that the amounts of said taxes enjoined as aforesaid was and is true, as aforesaid, as shown by the books and records of my said office.

S. J. SMOCK.

Subscribed and sworn to before me this 13th day of November, A. D. 1896.

[SEAL.]

FRANK B. APPERSON,

Notary Public in and for Kay County, Oklahoma Territory.

My com. exp. Dec. 18, 1897.

Endorsed: Supreme court of Oklahoma. D. P. Gay and A. S. Reed, as partners as Gay & Reed, *et al.*, plaintiffs in error and appellees, vs. A. M. Thomas, J. B. Hart, and H. B. Owen, as the board of county commissioners of Kay county, Oklahoma Territory, defendants in error and appellants. Affidavit of value. Filed November 18th, A. D. 1896. Edgar W. Jones, clerk supreme court.

42 In the Supreme Court of the Territory of Oklahoma.

D. P. GAY and A. S. REED, as Partners as Gay & Reed, *et al.*,
vs.

A. M. THOMAS, J. B. HART, and H. B. OWEN, as the Board of County
Commissioners of Kay County, Oklahoma Territory, *et al.*

OKLAHOMA TERRITORY, { ss.
Kay County,

Ira Hill, being first duly sworn, on his oath says: I have read and know the contents of the petition herein, and I have read and know the contents of the judgment of the district court of Kay county, Oklahoma Territory, rendered herein and from which the appeal and proceedings in error herein were prosecuted, and I have read and know the contents of the decision and judgment of the supreme court of Oklahoma rendered on the appeal and proceedings in error herein. I have examined the books, records, and papers of the county treasurer's office of Kay county, Oklahoma Territory, with reference to the levies, assessments, and taxes involved in the above suit and know the contents thereof; that I am acquainted with and know the said taxes, levies and assessments, and values and amounts thereof.

That the value and amount of the taxes enjoined by the decision and judgment of each of said courts herein is and was at the date of each of said judgments more than sixteen thousand dollars, exclusive of penalties, interest, and costs.

I am not a party to this suit nor in any manner interested in the result thereof.

IRA HILL.

Subscribed and sworn to before me November 13th, A. D. 1896.

[SEAL.]

FRANK B. APPERSON,
Notary Public, Kay County, Oklahoma Territory.

My commission expires Dec. 18, 1897.

Endorsed : Supreme court of Oklahoma. D. P. Gay and A. S. Reed, as partners as Gay & Reed, *et al.*, plaintiffs in error and appellees, *vs.* A. M. Thomas, J. B. Hart, and H. B. Owen, as the board, &c., defendants in error and appellants. Affidavit of value. Filed November 18th, A. D. 1896. Edgar W. Jones, clerk supreme court.

43 In the Supreme Court of the Territory of Oklahoma.

D. P. GAY and A. S. REED, as Partners as Gay & Reed ; A. M. Miller and J. B. Johnson, as Partners as Miller & Johnson ; M. Halff and S. Halff, as Partners as Halff Brothers ; R. H. Harris, W. C. Harris and William Childers, as Partners as Harris Brothers & Childers ; E. T. Comer and H. C. Comer, as Partners as Comer Brothers ; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume ; W. F. Smith and W. L. McCauley, as Partners as Smith & McCauley ; W. F. Smith, W. W. Irons, A. J. Adams ; A. J. Adams and Neal Shafer, as Partners as Adams & Shafer ; C. W. Burt, E. M. Hewins, I. D. Harkleroad ; Douglas Pierce and J. T. Crump, as Partners as Pierce & Crump ; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosley, Drury Warren, T. J. Moore, J. H. Slater and R. W. Prosser, Plaintiffs in Error,

vs.

A. M. THOMAS, J. B. HART, and H. B. OWENS, as the Board of County Commissioners of Kay County, Oklahoma Territory ; J. H. Lane, as the County Clerk of Kay County, Oklahoma Territory ; S. J. Smock, as County Treasurer of Kay County, Oklahoma Territory, and H. C. Masters, as Sheriff of Kay County, Oklahoma Territory, Defendants in Error and Cross-petitioners in Error.

Assignment of Errors.

Now come the said defendants in error and cross-petitioners in error by D. L. Weir, county attorney of Kay county, Oklahoma Territory, and Blevins & King, their attorneys, and say that the judgment and decision in said cause is erroneous and against the just rights of said defendants and cross-petitioners in error, and that in the record and proceedings aforesaid there is manifest error in this, to wit :

First. The supreme court erred in affirming the judgment of the district court of Kay county, Okalahoma Territory, herein.

Second. The court erred in not reversing the said judgment dissolving *in toto* the injunction granted plaintiffs and granting to cross-petitioners the relief prayed in their cross-petition in error.

Third. The court erred in adjudging illegal and in enjoining the cross-petitioners in error and appellants from levying or attempting to levy or collect the following tax levies for county purposes:

For salaries, five mills;

For contingent fund, three mills;

For sinking fund, one and one-half mills;

For county supplies, three mills;

For road and bridge fund, two mills;

For poor fund, one mill;

For county school fund, three mills, and so erred as to each of them.

Fourth. That said judgment and decree should have adjudged each and all of said tax levies legal and aright in the cross-petitioners to proceed and collect the same.

Fifth. The court erred in decreeing that article six, chapter forty-three (43), laws of Oklahoma, 1895, approved March 5, 1895, providing for the levy and collection of taxes on personal property on the Indian reservations (other than property of the Indians) by the counties to which such Indian reservations are attached for judicial purposes, was, as to county taxes for salaries, for contingent fund, for sinking fund, for county supplies, for road and bridge fund, for poor fund, and for county school fund, unconstitutional, illegal, and void.

Wherefore they pray that the said judgment and decision be reversed and the said injunction dissolved, and for such other and further relief as may be just, equitable, and proper.

D. L. WEIR,

County Attorney of Kay County, Oklahoma Territory, and

BLEVINS & KING,

Attorneys for Cross-petitioners in Error and Appellants.

Endorsed: Supreme court of Oklahoma. D. P. Gay and A. S. Reed, as partners as Gay & Reed, *et al.*, plffs in error and appellees, vs. A. M. Thomas, J. B. Hart, and H. B. Owen, as the board of county commissioners of Kay county, Oklahoma Ty., *et al.*, def'ts in error and appellants. Assignment of errors. Filed November 18th, A. D. 1896. Edgar W. Jones, clerk supreme court.

44 In the Supreme Court of the Territory of Oklahoma.

D. P. GAY and A. S. REED, as Partners as Gay & Reed; A. M. Miller and J. B. Johnson, as Partners as Miller & Johnson; M. Halff and S. Halff, as Partners as Halff Brothers; R. H. Harris, W. C. Harris, and William Childers, as Partners as Harris Brothers & Childers; E. T. Comer and H. C. Comer, as Partners as Comer Brothers; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume; W. F. Smith and W. L. McCauley; W. F. Smith, W. W. Irons, A. I. Adams; A. I. Adams and Neal Shafer, as Partners as Adams & Shafer; C. W. Burt, E. M. Hewins, I. D. Harkleroad; Douglas Pierce and J. T. Crump, as Partners as Pierce & Crump; James Stone, W. H. Holloway, Jesse H. Pugh, R. H. Mosley, Drury Warren, T. J. Moore, J. M. Slater, and R. W. Prosser, Plaintiffs in Error,

against

A. M. THOMAS, J. B. HART, and H. B. OWEN, as the Board of County Commissioners of Kay County, Oklahoma Territory; J. H. Lane, as the County Clerk of Kay County, Oklahoma Territory; S. J. Smock, as the County Treasurer of Kay County, Oklahoma Territory, and H. C. Masters, as Sheriff of Kay County, Oklahoma Territory, Defendants in Error.

Cross-assignment of Errors on Appeal.

Now, on this 20th day of November, A. D. 1896, come the said plaintiffs in error in this court by Asp, Shartel & Cottingham, their attorneys and solicitors, and say that the decree in said cause is erroneous and against the just rights of the said plaintiffs for the following reasons:

First. Because the said court erred in affirming judgment of the court below, whereas the said order of this court should have been a reversal of the judgment of the court below for the reason that the property of the plaintiffs was and is liable for none of the taxes by said court in said judgment declared to be legal and valid.

Second. Because the said Osage and Kaw Indian reservations attempted to be attached to the said county of Kay for judicial purposes are no part of said county of Kay for the purposes of taxation or for any municipal purposes whatever.

Third. Because the law attempting to impose said taxes is unconstitutional and void in the following particulars, to wit:

- a. It is local and special legislation.
- b. It violates the rule of uniformity prescribed in the organic act of said Territory.
- c. It discriminates in the taxing system against the property of non-residents of said Territory.

Fourth. Because the said Osage and Kaw Indian reservations in which said property had its situs is no part of the Territory of Oklahoma for the purpose of taxation.

Fifth. Because the tax attempted to be imposed by said Legislative Assembly is a tax upon the Indian tribes occupying said reser-

vations and the members of said tribes in violation of the authority of Congress in the premises and of the treaty stipulations between the United States and said Indians and Indian tribes.

Wherefore the said plaintiffs in error allege that the said seven and one-tenth mills levy of the various taxes in controversy in this cause, which were held to be valid by the district court of the county of Kay and Territory of Oklahoma, and which said holding is affirmed by the decree herein appealed from, is erroneous, and the said plaintiffs in error pray that said decree be reversed in respect to the said four and six-tenths mills on the dollar of valuation of territorial levies and two and one-half mills of county levies for court expenses be held to be null and void, and that the said cause be remanded to the supreme court of said Territory with directions that judgment be entered reversing the action of the district court of Kay county and directing that judgment be entered in favor of the said plaintiffs in error as in their petition in the court below alleged and claimed abating and enjoining the collection of all of the taxes attempted to be levied against the property of these plaintiffs in error by the said defendants in error in said county of Kay and Territory of Oklahoma.

HENRY E. ASP,
JOHN W. SHARTEL AND
JAMES R. COTTINGHAM,
Attorneys and Solicitors for Plaintiffs in Error.

Endorsed: In the supreme court of Oklahoma Territory. D. P. Gay *et al.* vs. A. M. Thomas *et al.* Cross-assignment of errors on appeal. Filed November 20th, 1896. Edgar W. Jones, clerk supreme court.

46 UNITED STATES OF AMERICA, {
Territory of Oklahoma, }^{ss}:

I, Edgar W. Jones, clerk of the supreme court of the Territory of Oklahoma, do hereby certify the above and foregoing papers, numbered from one to 45, all numbers inclusive, to be a full, true, perfect, and complete transcript and copy of the record, papers, and proceedings, and of all thereof filed or had and entered of record in said court and in a certain cause lately in said court pending, wherein D. P. Gay and A. S. Reed, as partners as Gay & Reed; A. M. Miller and J. B. Johnson, as partners as Miller & Johnson; M. Halff and S. Halff, as partners as Halff Brothers; R. H. Harris, W. C. Harris, and William Childers, as partners as Harris Brothers & Childers; E. T. Comer and H. C. Comer, as partners as Comer Brothers; J. H. Carney, G. M. Carpenter, Virgil Herard, G. T. Hume; W. F. Smith and W. L. McCauley, as partners as Smith & McCauley; W. F. Smith, W. W. Irons, A. I. Adams; A. I. Adams and Neal Shafer, as partners as Adams & Schafer; C. W. Burt, E. M. Hewins, I. D. Harkleroad; Douglas Pierce and J. T. Crump, as partners as Pierce & Crump; James Stone, W. M. Holloway, Jesse H. Pugh, R. H. Mosely, Drury Warren, T. J. Moore, J. M. Slater,

and R. W. Prosser were plaintiffs in error and defendants to cross-petition in error and A. M. Thomas, J. B. Hart, and H. B. Owen, as the board of county commissioners of Kay county, Oklahoma Territory; J. H. Lane, as the county clerk of Kay county, Oklahoma Territory; S. J. Smock, as county treasurer of Kay county, Oklahoma Territory, and H. C. Masters, as sheriff of Kay county, Oklahoma Territory, were defendants in error and cross-petitioners in error, as fully and completely as the same still remain on file or of record in my office, at Guthrie, Oklahoma Territory.

I further certify that the orginal citations herein are each and both hereto attached and herewith returned with the acceptance of service thereof duly endorsed on each.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Guthrie, in said Territory, this 16th day of December, A. D. 1896.

[Seal Supreme Court, Territory of Oklahoma.]

EDGAR W. JONES,
Clerk of the Supreme Court.

Endorsed on cover: Case No. 16,467. Oklahoma Territory, supreme court. Term No. 287. A. M. Thomas, J. B. Hart, and H. B. Owen, as the board of county commissioners of Kay county, Oklahoma Territory, *et al.*, appellants, *vs.* D. P. Gay and A. S. Reed, partners as Gay & Reed, *et al.* Filed January 15th, 1897. Case No. 16,652. Term No. 439. D. P. Gay and A. S. Reed, partners as Gay & Reed, *et al.*, appellants, *vs.* A. M. Thomas, J. B. Hart, and H. B. Owen, as the board of county commissioners of Kay county, Oklahoma Territory, *et al.* Filed August 20th, 1897.